

**[IN ACCORDANCE WITH CALIFORNIA INSURANCE CODE (CIC) SECTION 12938,
THIS REPORT WILL BE MADE PUBLIC AND PUBLISHED ON THE
CALIFORNIA DEPARTMENT OF INSURANCE (CDI) WEBSITE]**

**WEBSITE PUBLISHED REPORT OF THE TARGETED MARKET
CONDUCT EXAMINATION OF THE CLAIMS PRACTICES OF**

**CALIFORNIA FAIR PLAN ASSOCIATION
NAIC # 33665 CDI # 0000-0**

**AND ITS PRACTICES AND PROCEDURES RELATING TO
HOMEOWNERS/DWELLING INSURANCE CLAIMS**

AS OF MARCH 18, 2021

ADOPTED MAY 25, 2022

STATE OF CALIFORNIA



**CALIFORNIA DEPARTMENT OF INSURANCE
MARKET CONDUCT DIVISION
FIELD CLAIMS BUREAU**

NOTICE

The provisions of Section 735.5(a) (b) and (c) of the California Insurance Code (CIC) describe the Commissioner's authority and exercise of discretion in the use and/or publication of any final or preliminary examination report or other associated documents. The following examination report is a report that is made public pursuant to California Insurance Code Section 12938(b)(1) which requires the publication of every adopted report on an examination of unfair or deceptive practices in the business of insurance as defined in Section 790.03 that is adopted as filed, or as modified or corrected, by the Commissioner pursuant to Section 734.1.

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FOREWORD

The targeted examination is in response to complaints received by the Department regarding CFPA's handling of claims for smoke damage. Specifically, the examination focused on CFPA's processing of claims for smoke damage and contract language applied to justify denial of, or reduced payment for, claims for smoke damage with respect to wildfires, regular fires and all other dwelling claims within the review period.

This report is written in a "report by exception" format. The report does not present a comprehensive overview of the subject insurer's practices. The report contains a summary of pertinent information about the lines of business examined, details of the non-compliant activities that were discovered during the course of the examination and the insurer's proposals for correcting the deficiencies. When a violation that reflects an underpayment to the claimant is discovered and the insurer corrects the underpayment, the additional amount paid is identified as a recovery in this report.

While this report contains violations of law that were cited by the examiner, additional violations of CIC § 790.03 or other laws not cited in this report may also apply to any or all of the non-compliant activities that are described herein.

All non-compliant activities may not have been discovered. Failure to identify, comment upon or criticize non-compliant practices in this state or other jurisdictions does not constitute acceptance of such practices.

Alleged violations identified in this report, any criticisms of practices and CFPA's responses, if any, have not undergone a formal administrative or judicial process.

This report is made available for public inspection and is published on the California Department of Insurance website (www.insurance.ca.gov) pursuant to California Insurance Code section 12938(b)(1).

SCOPE OF THE EXAMINATION

Under the authority granted in Part 2, Chapter 1, Article 4, Sections 730, 733, and 736, and Article 6.5, Section 790.04 of the California Insurance Code; and Title 10, Chapter 5, Subchapter 7.5, Section 2695.3(a) of the California Code of Regulations, an examination was made of the claim handling practices and procedures in California of:

California FAIR Plan Association NAIC # 33665

Hereinafter, the California FAIR Plan Association will be referred to as CFPA or FAIR Plan.

This targeted examination covered the claim handling practices of CFPA on homeowners / dwelling fire claims closed during the period from January 1, 2017 through March 18, 2021. The examination was made to discover, in general, if these and other operating procedures of CFPA conform to the contractual obligations in the policy forms, the California Insurance Code (CIC), the California Code of Regulations (CCR) and case law.

To accomplish the foregoing, the examination included:

1. A review of the guidelines, procedures, training plans and forms adopted by CFPA for use in California including any documentation maintained by CFPA in support of positions or interpretations of the California Insurance Code, Fair Claims Settlement Practices Regulations, and other related statutes, regulations and case law.

2. A review of the application of such guidelines, procedures, and forms, by means of an examination of a sample of individual claim files and related records. In the review of the individual claim files, the following factors were specifically considered for compliance:

- Does CFPA provide coverage against the peril of fire that is at least equivalent to that required under the Standard Fire Policy pursuant to CIC § 2071?
- Are CFPA's policy provisions relating to the investigation, processing and settlement of claims consistent with or more favorable to the insured than the provisions of the Fair Claims Settlement Practices Regulations?

3. A review of the California Department of Insurance's (CDI) market analysis results; a review of consumer complaints and inquiries about CFPA closed by the CDI during the period January 1, 2017 through March 18, 2021, a review of previous CDI market conduct claims examination reports on CFPA; and a review of prior CDI enforcement actions.

4. A review of CFPA's handling of its "Dispute resolution of smoke damage claims" clause regarding the appraisal provision in the policy.

The review of the sample of individual claim files was conducted at the offices of the California Department of Insurance in Los Angeles and Sacramento, California.

EXECUTIVE SUMMARY

The homeowners / dwelling fire claims reviewed were closed from January 1, 2017 through March 18, 2021, referred to as the “review period”. The homeowner / dwelling fire claims populations were comprised of both closed and open claims. The claim populations requested were for claims involving wildfires, smoke damage, regular fires, claims with no loss cause identified, and litigated files. A sample of claims was selected from each of these categories. In total, the examiners randomly selected 259 CFPA claim files for examination. The examiners cited 418 violations of the California Insurance Code and the California Code of Regulations from this sample file review.

The findings of this examination include the following:

- Contrary to CIC § 2070, CFPA failed to issue a fire policy, when viewed in its entirety, that is substantially equivalent to or more favorable to the insured than that contained in the California Standard Form Fire Insurance Policy as reflected in CIC § 2071.
- CFPA failed to provide coverage for all loss by fire as set forth in the California Standard Form Fire Insurance Policy.
- CFPA failed to specify, in the written notice, any additional information the insurer requires to make a claim determination and to state any continuing reasons for CFPA’s inability to make a determination; and failed to provide written notice of the need for additional time or information every 30 calendar days.
- CFPA failed to conduct and diligently pursue a thorough, fair and objective investigation.
- CFPA failed to comply with the requirements of CCR §2695.7(b).
- CFPA failed to disclose all benefits, coverage, time limits or other provisions of the insurance policy.

The examination also included a review of the appraisal provision of the policy and its application to any claims involving smoke damage. The denials related to smoke damage included reference to this provision in the correspondence. The appraisal provision was not invoked in any of the files reviewed for this examination.

CFPA was the subject of 173 California consumer complaints related to homeowner / dwelling fire claims closed from January 1, 2017 through March 18, 2021. Within these 173 complaints, CDI identified violations of law including failure to adopt and implement reasonable standards for the prompt investigation and processing of claims; failure to accept or deny the claim within 40 calendar days; failure to provide written notice of the need for additional time or information every 30 calendar days; failure to disclose all benefits, coverage, and time limits; failure to respond to communications within 15 calendar days; failure to provide applicable notice describing relevant California laws related to a declared state of emergency no later than 15 calendar days; and failure to maintain all documents, notes and work papers. The examiners focused on these issues during the course of the file review in addition to the targeted examination focus of CFPA's handling of smoke damage claims.

The previous CDI claims examination of CFPA reviewed a sample of claims closed during the period of September 1, 2015 through August 31, 2016. Noncompliance issues identified in the previous examination report included CFPA's failure to document in the claim file all justification for the adjustment of the amount claimed because of betterment, depreciation, or salvage; failure to fully explain the basis for any adjustment in writing; and failure to apply betterment or depreciation to property not normally subject to repair and replacement during the useful life of the property. These noncompliance issues were also identified in the current examination.

DETAILS OF THE CURRENT EXAMINATION

Further details with respect to the examination and violations found are provided in the following tables and summaries:

CALIFORNIA FAIR PLAN SAMPLE FILES REVIEW			
LINE OF BUSINESS / CATEGORY	CLAIMS IN REVIEW PERIOD	SAMPLE FILES REVIEWED	NUMBER OF VIOLATIONS
Homeowners / Dwelling Fire Wildfire Closed	2,428	55	53
Homeowners / Dwelling Fire Wildfire Open	645	15	64
Homeowners / Dwelling Fire Smoke Damage Closed	1159	64	112
Homeowners / Dwelling Fire Smoke Damage Open	130	45	109
Homeowners / Dwelling Fire Regular Fire Closed	2,165	18	9
Homeowners / Dwelling Fire Regular Fire Open	195	17	41
Homeowners / Dwelling Fire No Loss Cause Identified Closed	2,518	18	0
Homeowners / Dwelling Fire No Loss Cause Identified Open	494	17	11
Homeowners / Dwelling Fire Litigated	21	10	19
TOTALS	9,755	259	418

TABLE OF TOTAL VIOLATIONS

Citation	Description of Allegation	CFPA Number of Violations	TOTAL
CIC §2070 *[CIC §790.03(h)(3)] and *[CIC §790.03(h)(5)]	CFPA failed to provide coverage with respect to the peril of fire, when viewed in its entirety, that is substantially equivalent to or more favorable to the insured than that contained in such standard form fire insurance policy.	59	59
CIC §2071 *[CIC §790.03(h)(3)] and *[CIC §790.03(h)(5)]	CFPA denied or discouraged a claim for smoke damage by using policy language which does not conform to the California Standard Form Fire Insurance Policy.	59	59
CCR §2695.7(c)(1) *[CIC §790.03(h)(3)]	CFPA failed to specify, in the written notice of the need for additional time, any additional information the insurer requires to make a claim determination and to state any continuing reasons for CFPA's inability to make a determination.	65	85
	CFPA failed to provide written notice of the need for additional time every 30 calendar days until a determination is made.	20	
**CCR §2695.7(d) *[CIC §790.03(h)(3)]	CFPA failed to conduct and diligently pursue a thorough, fair and objective investigation.	38	38
CCR §2695.7(b) *[CIC §790.03(h)(4)]	CFPA failed, upon receiving proof of claim, to accept or deny the claim within 40 calendar days.	20	31
CCR §2695.7(b)(1) *[CIC §790.03(h)(13)]	CFPA failed to provide in writing the reasons for the denial of the claim in whole or in part including the factual and legal bases for each reason given.	9	
CCR §2695.7(b)(3) *[CIC §790.03(h)(3)]	CFPA failed to include a statement in its claim denial that, if the claimant believes all or part of the claim has been wrongfully denied or rejected, he or she may have the matter reviewed by the California Department of Insurance.	2	

Citation	Description of Allegation	CFPA Number of Violations	TOTAL
CIC §§2051 and 2051.5 / CCR §2695.9(f) *[CIC §790.03(h)(3)] CCR §2695.9(f) *[CIC §790.03(h)(5)] CCR §2695.9(f) *[CIC §790.03(h)(3)] CCR §2695.9(f)(1) *[CIC §790.03(h)(5)]	CFPA failed to document in the claim file all justification for the adjustment of the amount claimed because of betterment, depreciation, or salvage. Any adjustment for betterment or depreciation shall reflect a measurable difference in market value attributable to the condition and age of the property. CFPA applied betterment or depreciation to property not normally subject to repair and replacement during the useful life of the property. CFPA failed, in adjusting the amount claimed because of betterment, depreciation, or salvage, to fully explain the basis for the adjustment to the claimant in writing. CFPA applied depreciation to the expense of labor necessary to repair, rebuild, or replace covered property. The expense of labor is not a component of physical depreciation.	13 10 3 1	27
CCR §2695.4(a) *[CIC §790.03(h)(1)]	CFPA failed to disclose all benefits, coverage, time limits or other provisions of the insurance policy that may apply to the claim presented by the claimant. When additional benefits might reasonably be payable under an insured's policy upon receipt of additional proofs of claim, the insurer shall immediately communicate this fact to the insured and cooperate with and assist the insured in determining the extent of the insurer's additional liability.	25	25
CCR §2695.7(h) *[CIC §790.03(h)(5)]	CFPA failed, upon acceptance of the claim, to tender payment within 30 calendar days.	21	21
CCR §2695.7(g) *[CIC §790.03(h)(5)]	CFPA attempted to settle a claim by making a settlement offer that was unreasonably low.	16	16
CIC §790.03(h)(15)	CFPA misled a claimant as to the applicable statute of limitations.	12	12
CCR §2695.9(d) *[CIC §790.03(h)(3)]	CFPA settled the claim on the basis of a written scope and/or estimate without supplying the insured with a copy of each document upon which the settlement was based.	7	7

Citation	Description of Allegation	CFPA Number of Violations	TOTAL
CCR §2695.5(e)(2) *[CIC §790.03(h)(3)]	CFPA failed, upon receiving notice of claim, to provide necessary forms, instructions, and reasonable assistance within 15 calendar days.	5	6
CCR §2695.5(e)(3) *[CIC §790.03(h)(3)]	CFPA failed, upon receiving notice of claim, to begin any necessary investigation within 15 calendar days.	1	
CCR §2695.5(b) *[CIC §790.03(h)(2)]	CFPA failed to respond to communications within 15 calendar days.	5	5
CCR §2695.7(d) *[CIC §790.03(h)(3)]	CFPA persisted in seeking information not reasonably required for or material to the resolution of a claims dispute.	5	5
CIC §790.03(h)(1)	CFPA misrepresented to claimants pertinent facts or insurance policy provisions relating to any coverages at issue.	4	4
CCR §2695.3(a) *[CIC §790.03(h)(3)]	CFPA failed to maintain all documents, notes and work papers which reasonably pertain to each claim in such detail that pertinent events and the dates of the events can be reconstructed.	4	4
CCR §2695.7(q) *[CIC §790.03(h)(5)]	CFPA failed to share subrogation recoveries on a proportionate basis with the first party claimant.	4	4
CCR §2695.7(f) *[CIC §790.03(h)(3)]	CFPA failed to provide written notice of any statute of limitation or other time period requirement upon which the insurer may rely to deny a claim.	3	3
CIC §790.03(h)(5)	CFPA failed to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear.	2	2
CIC §14046(b)(1) *[CIC §790.03(h)(3)]	CFPA failed to provide the claimant with a copy of the most recent notice describing the most significant California laws pertaining to property insurance policies, including those related to a declared state of emergency, as defined in Section 8558 of the Government Code, or other emergency declared by a public official no later than 15 calendar days from the date on which the insurer received notice of the claim.	3	3
CIC §790.034(b)(1) *[CIC §790.03(h)(3)]	CFPA failed, upon receiving notice of claim, to provide the insured with a copy of §790.03 of the California Insurance Code within 15 calendar days.	2	2
Total Number of Violations		418	418

**Citation CCR §2695.7(d) for failure to conduct and diligently pursue a thorough, fair and objective violation includes four related specifically to smoke damage. The other 34 citations were for instances observed in files in which smoke damage was not part of the claim.

***DESCRIPTIONS OF APPLICABLE
UNFAIR CLAIMS SETTLEMENT PRACTICES**

- CIC §790.03(h)(1) CFPA misrepresented to claimants pertinent facts or insurance policy provisions relating to any coverages at issue.
- CIC §790.03(h)(2) CFPA failed to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.
- CIC §790.03(h)(3) CFPA failed to adopt and implement reasonable standards for the prompt investigation and processing of claims arising under insurance policies.
- CIC §790.03(h)(4) CFPA failed to affirm or deny coverage of claims within a reasonable time after proof of loss requirements had been completed and submitted by the insured.
- CIC §790.03(h)(5) CFPA failed to effectuate prompt, fair, and equitable settlements of claims in which liability had become reasonably clear.
- CIC §790.03(h)(13) CFPA failed to provide promptly a reasonable explanation of the basis relied upon in the insurance policy, in relation to the facts or applicable law, for the denial of a claim or for the offer of a compromise settlement.

TABLE OF ALLEGED VIOLATIONS BY LINE OF BUSINESS

<p align="center">HOMEOWNERS / DWELLING FIRE CFPA Written Premium: Not Applicable (CFPA does not make public financial filings)</p>	<p align="center">NUMBER OF VIOLATIONS</p>
<p>AMOUNT OF RECOVERIES \$156,866.32</p>	
CIC §2070 [CIC §790.03(h)(3)] / [CIC §790.03(h)(5)]	59
CIC §2071 [CIC §790.03(h)(3)] / [CIC §790.03(h)(5)]	59
CCR §2695.7(c)(1) [CIC §790.03(h)(3)]	85
*CCR §2695.7(d) [CIC §790.03(h)(3)]	38
CCR §2695.7(b) [CIC §790.03(h)(4)] / CCR §2695.7(b)(1) [CIC §790.03(h)(13)] / CCR §2695.7(b)(3) [CIC §790.03(h)(3)]	31
CIC §§2051 and 2051.5 / CCR §2695.9(f) [CIC §790.03(h)(3)] / [CIC §790.03(h)(5)] / CCR §2695.9(f)(1) [CIC §790.03(h)(5)]	27
CCR §2695.4(a) [CIC §790.03(h)(1)]	25
CCR §2695.7(h) [CIC §790.03(h)(5)]	21
CCR §2695.7(g) [CIC §790.03(h)(5)]	16
CIC §790.03(h)(15)	12
CCR §2695.9(d) [CIC §790.03(h)(3)]	7
CCR §2695.5(e)(2) / CCR §2695.5(e)(3) [CIC §790.03(h)(3)]	6
CCR §2695.5(b) [CIC §790.03(h)(2)]	5
CCR §2695.7(d) [CIC §790.03(h)(3)]	5
CIC §790.03(h)(1)	4
CCR §2695.3(a) [CIC §790.03(h)(3)]	4
CCR §2695.7(q) [CIC §790.03(h)(3)]	4
CCR §2695.7(f) [CIC §790.03(h)(3)]	3
CIC §790.03(h)(5)	2
CIC §14046(b)(1) [CIC §790.03(h)(3)]	3
CIC §790.034(b)(1) [CIC §790.03(h)(3)]	2
<p align="center">TOTAL</p>	<p align="center">418</p>

*Citation CCR §2695.7(d) includes four related specifically to smoke damage and the other citations were observed in the files reviewed without smoke damage.

SUMMARY OF EXAMINATION RESULTS

The following is a brief summary of the criticisms that were developed during the course of this examination related to the violations cited in this report.

In response to each criticism, CFPA is required to identify remedial or corrective action that has been or will be taken to correct the deficiency. CFPA is obligated to ensure that compliance is achieved.

Additional claim payments made by CFPA in response to the violations identified in the examination total \$156,866.32 to date, as described in section numbers 2, 5, 6, 7, 10, 18 and 21 below. As described in section 7 below, CFPA is also conducting a closed claims survey. The results of the survey and additional payments, if any, shall be reported to the Department on or before May 31, 2022.

Violations observed specific to CFPA's practices for handling claims for smoke damage are described below:

1. In 59 instances, CFPA failed to issue a fire policy when viewed in its entirety, that is substantially equivalent to or more favorable to the insured than that contained in such standard form fire insurance policy. FAIR Plan's policy issued in these 59 instances does not conform to the requirements of the California Standard Form Fire Insurance Policy. Although CDI approved the policy, CFPA omitted relevant facts and misrepresented revised language as providing broad or broader coverage than the policy provided previously. In CFPA's Filing Memorandum in support of its form filing to CDI, CFPA specifically represented to CDI that its proposed revisions, including its new definition of "direct physical loss," would not reduce or eliminate existing coverages, might even broaden coverage, and would have no rate impact. Specifically, CFPA stated: "The changes in the policy will either provide no change in coverage or will provide some broadening of coverage. The FAIR Plan will not revise rates for the additional coverage."

Despite its representations to CDI, CFPA handled claims for smoke damage based on its policy's definition of "direct physical damage" as requiring permanent physical changes to covered property. However, loss caused by fire does not require "permanent physical changes" for there to be coverage. Further, a loss from smoke stemming from fire should be adjusted as would a loss caused only by fire. Smoke damage is not a separate occurrence from fire. CFPA's definition of smoke and/or smoke damage is not

at least equivalent to that required under the Standard Form Fire Insurance Policy and is therefore a violation of law.

In his January 4, 2021 letter to CFPA, CDI General Counsel and Deputy Commissioner Kenneth Schnoll states CDI's position as follows:

Any attempt by FAIR Plan to reduce or limit coverage for smoke damage based on its definition of direct physical damage to require "permanent physical changes" to covered property is contrary to the law. Under Insurance Code sections 10090 et seq., FAIR Plan is required to offer, *inter alia*, "basic property insurance" to Californians who experience difficulty obtaining insurance in the voluntary market. "Basic property insurance" in California includes smoke damage from fire. Specifically, section 10091, subdivision (c), defines "basic property insurance" to include, without limitation, coverage for "perils insured under the standard fire policy."

Insurance Code section 2071, which sets forth the California standard form fire insurance policy, requires coverage for "***all*** LOSS BY FIRE ... EXCEPT AS HEREINAFTER PROVIDED." (Emphasis added). The coverage exclusions "hereinafter provided" in Section 2071 do not include smoke damage from fire. Additionally, section 2070 specifies:

No part of the standard form shall be omitted therefrom except any policy providing coverage against the peril of fire only, or in combination with coverage against other perils, need not comply with the provisions of the standard form of fire insurance policy...**provided, that coverage with respect to the peril of fire, when viewed in its entirety, is substantially equivalent to or more favorable to the insured than that contained in such standard form fire insurance policy.**

(Emphasis added.)

FAIR Plan's policy form language, as reportedly utilized by FAIR Plan, provides less coverage than the coverage required under the standard form fire policy because it limits coverage for fire loss through its definition of "direct physical loss," as "any actual loss or physical damage, evidenced by permanent physical changes, to the covered property . . ."

CFPA's handling of smoke damage claims is in violation of CIC §2070 and is an unfair practice under CIC §790.03(h)(3) and CIC §790.03(h)(5).

Summary of CFPA's Response: CFPA disagrees and states the dwelling policy form issued in these instances require direct physical loss, defined as "any actual loss or physical damage, evidenced by permanent physical changes, to the covered property . . ." CFPA further states this language is commonly used in insurance

policies, and has been confirmed to require an actual change in insured property causing it to become unsatisfactory for future use or requiring repairs to make it satisfactory for future use, or a distinct, demonstrable, physical alteration of the property. When a property does not need repair but only needs routine cleaning, it has not suffered a direct physical loss. The issued policies cover “smoke damage” that is visible to the unaided human eye or odor from smoke and ash that is detected by the unaided human nose of an average person, and not by laboratory testing. In these instances, the independent adjusters (IA) did not detect smoke damage as defined by the policy.

Further, CFPA states Insurance Code Section 2070 specifies that a fire policy need not comply with the standard form fire insurance policy provided that “coverage with respect to the peril of fire, when viewed in its entirety, is substantially equivalent to or more favorable to the insured than that contained in such standard form fire insurance policy.” The CFPA Policy includes coverage for loss from the peril of fire. CFPA states the fact that the Policy also includes coverage for loss from other perils, including “smoke damage,” does not result in any diminished coverage under the Policy with respect to the peril of fire and, therefore, the Policy complies with this statute.

Summary of the Department’s Evaluation of CFPA’s Response: The California FAIR Plan Association was created to provide “basic property insurance” to Californians who are unable to procure such insurance in the voluntary market. “Basic property insurance” is defined under CIC §10091(c)(1) to include coverage for “perils insured under the standard fire policy.” California Insurance Code section 2070 specifies:

No part of the standard form shall be omitted therefrom except any policy providing coverage against the peril of fire only, or in combination with coverage against other perils, need not comply with the provisions of the standard form of fire insurance policy...provided, that coverage with respect to the peril of fire, when viewed in its entirety, is substantially equivalent to or more favorable to the insured than that contained in such standard form fire insurance policy.

CFPA’s application of its policy language fails to comply with California law. This is an unresolved issue that may result in administrative action.

2. In 59 instances, CFPA failed to provide coverage for all loss by fire as set forth in the California Standard Form Fire Insurance Policy. CFPA denied or limited coverage for smoke damage. The Department alleges these acts are in violation of CIC §2071 and are unfair practices under CIC §790.03(h)(3) and §790.03(h)(5).

Summary of CFPA’s Response: CFPA disagrees it is in violation of CIC §2071. CFPA responds as follows:

In 48 instances, CFPA states its policy covers “smoke damage” that is visible to

the unaided human eye or odor from smoke and ash that is detected by the unaided human nose of an average person, and not by laboratory testing. Therefore, coverage was denied.

In six instances, CFPA states the property did not need repair as a result of the fire, only routine cleaning. Consequently, coverage beyond routine cleaning was denied.

In one instance, CFPA responds the insured did not make a claim for cleaning due to smoke. However, as a result of the examination, CFPA agreed to pay for deodorization. A payment was issued to the insured in the amount of \$4,198.91.

In one instance, CFPA responds the adjuster inspected the property with the insured and noted that there was no visible soot/ash on the interior or exterior, and there was no contents damage. On October 15, 2020 the insured told CFPA she had smoke damage, and was cleaning the dwelling, but the IA had inspected the property on September 25, 2020, and there was no evidence of permanent damage from soot or ash to the dwelling. The photos showed no evidence of soot or smoke damage including samples taken by the IA in various areas of the dwelling. Deodorization was paid for to address smoke odor in the dwelling and contents; however, the insured was advised in writing on October 28, 2020 that CFPA would not pay for other claims of damage due to smoke.

In one instance, CFPA responds that the insured verbally confirmed there was no damage to the home as a result of the fire. Therefore, CFPA did not order an inspection to evaluate for smoke damage.

In one instance, CFPA responds that the adjuster inspected the interior and exterior of the dwelling and other structures on the property, including the pool and found no damage and no noticeable smoke odor. Therefore, coverage was denied.

In one instance, CFPA disagrees that it failed to provide coverage for personal property items damaged by the fire. However, CFPA acknowledges that it failed to follow through with its final evaluation of the personal property evaluation of the claim. As a result of the examination, the claim was reopened and a supplemental payment of \$2,226.03 was issued.

Additionally, CFPA states its policy and the manner in which it interprets its policy is consistent with California law. Routine cleaning is not a covered peril. However, CFPA does cover smoke deodorization and for cleaning soot, char and ash when something more than routine cleaning is required. CFPA states this is consistent with Insurance Code sections 2070 and 2071.

Summary of the Department's Evaluation of CFPA's Response: The California Insurance Code requires coverage for "all LOSS BY FIRE". These denials restrict or limit coverage for "direct physical loss from smoke". Further, smoke claims present special considerations, including but not limited to the fact that the damage is

often hidden or does not manifest within a normal proof of loss timeframe. Therefore, this is an unresolved issue that may result in administrative action.

3. In four instances, CFPA failed to conduct and diligently pursue a thorough, fair and objective investigation. CFPA denied smoke damage claims without investigating them and in doing so, CFPA did not meet its obligation to conduct and diligently pursue a thorough, fair and objective investigation. The Department alleges these acts are in violation of CCR §2695.7(d) and are unfair practices under CIC §790.03(h)(3).

Summary of CFPA's Response: CFPA disagrees with these findings. The FAIR Plan policy covers direct physical loss, defined as actual loss or physical damage, evidenced by permanent physical changes. This language applies to all perils, not just smoke or fire. This language is present in policies throughout the country, including in California. With respect to smoke damage, the FAIR Plan policy covers "smoke damage" that is visible to the unaided human eye or odor from smoke and ash that is detected by the unaided human nose of an average person, and not by laboratory testing. In these instances, the FAIR Plan completed a thorough, fair and objective investigation, and confirmed there was no damage as defined by the policy to the structures or contents, so no inspection was needed to evaluate any damage. Smoke odor which can be detected by the unaided human nose of an average person is considered direct physical loss, while particulate matter from smoke that can be addressed by typical methods of household cleaning is not. In these instances, there was no evidence of permanent damage to the property, which is required for coverage to be triggered.

Summary of the Department's Evaluation of CFPA's Response: CFPA denied the claims without conducting a full investigation into damages related to smoke. Instead CFPA either misapplied or relied on its non-conforming policy definition of "smoke damage" requiring permanent physical changes to covered property to deny the claims. Therefore, this is an unresolved issue and may result in administrative action.

Additional violations not specific to CFPA's practices for handling claims for smoke damage were also observed in the claim files reviewed. These violations are described below:

4. In 85 instances, CFPA failed to comply with the requirements of CCR §2695.7(c)(1) as described below:

4(a). In 65 instances, CFPA failed to specify, in the written notice of the need for additional time, any additional information the insurer requires to make a claim determination and to state any continuing reasons for CFPA's inability to make a determination. In 63 instances, the additional time letters did not adequately communicate the reason why payment was delayed. In another two instances, there were no details regarding the claim determination delay. The Department alleges these

acts are in violation of CCR §2695.7(c)(1) and are unfair practices under CIC §790.03(h)(3).

Summary of CFPA's Response to 4(a): In 63 instances, CFPA agrees with these findings. The independent adjuster's (IA) additional time letters do not adequately communicate the reason for the delay in payment, and what else is needed to move the claim forward. Although the IA in the field did not specify the reason(s) for the delay, CFPA staff repeatedly informed the insureds via emails and phone calls of what was needed to move their claim forward.

Nonetheless, CFPA recognizes the additional time letters provided by the IAs were lacking in details and did not meet the requirements of the regulation. As a result of the examination, CFPA counseled the IAs and terminated specific IAs.

To address regulatory compliance, CFPA is standardizing its additional time letters, and bringing these letters in-house to ensure they are compliant with California regulations. CFPA is working on building a permanent internal claims department with examiners that are trained on the requirements of the California Fair Claim Settlement Practices Regulations, Insurance Codes, and other applicable California law in an effort to limit the need for outside IAs and vendors. Over the course of this targeted examination, CFPA began putting corrective measures in place, and continues to implement new processes and procedures. CFPA has hired internal claim examiners, quality auditors, and trainers to improve compliance with issues identified by CDI during the course of this examination. CFPA implemented a staff of internal auditors that over several months has conducted audits on random files handled by the IA's examiners, as well as internal staff examiner files, and will continue to do so. Unfortunately, given the realities of the current employment market, the FAIR Plan has not been able to hire as quickly as it would like. Accordingly, it does not yet have an anticipated date when its claim department will be fully staffed. The FAIR Plan has terminated certain independent adjusting firms, and is making its claim examiners rather than independent adjusters responsible for status letters to insureds. The FAIR Plan is in the process of updating its claim software, is working on a number of other initiatives to make its claim process more efficient and compliant, and has advised the Department that the claim software update is a multi-year initiative.

In the remaining two instances, CFPA disagrees with these findings. CFPA states in these instances there was no additional information needed from the insureds. The additional time letters were only to notify them of additional time to complete a thorough and proper evaluation of the claim, and make a final coverage determination.

Summary of the Department's Evaluation of CFPA's Response 4(a): In the two instances in which CFPA disagrees, CFPA's interpretation and position that the insurer must request information in order for an additional time letter to be owed is incorrect. If CFPA has received proof of claim that reasonably supports the magnitude of the amount of the claimed loss, then additional time letters explaining the reason for the delay are owed to the insured every 30 days. Additionally, CFPA's response that it

is working on building an internal claims department and has begun corrective measures does not provide estimated completion dates, clarification on procedural changes, training to be conducted, and the date or dates the corrective actions and changes were or will be implemented. Therefore, this is an unresolved issue that may result in administrative action.

4(b). In 20 instances, CFPA failed to provide written notice of the need for additional time every 30 calendar days until a determination is made. In these instances, CFPA either did not send the insureds letters advising of the need for additional time to investigate the claim, or did not send the letters when they were due. The Department alleges these acts are in violation of CCR §2695.7(c)(1) and are unfair practices under CIC §790.03(h)(3).

Summary of CFPA's Response to 4(b): CFPA agrees with these findings that CFPA did not send additional time letters when they were due. CFPA is aware of the issue with the outside IAs and is working on building a permanent internal claims department with examiners that are trained on the requirements of the California Fair Claim Settlement Practices Regulations, Insurance Codes, and other applicable California law in an effort to limit the need for outside IAs and vendors. Over the course of this targeted examination, CFPA began putting corrective measures in place, and continues to implement new processes and procedures. CFPA has hired internal claim examiners, quality auditors, and trainers to improve compliance with issues identified by the Department during course of this examination. CFPA implemented a staff of internal auditors that over several months has conducted audits on random files handled by the IA's examiners, as well as internal staff examiner files, and will continue to do so. Unfortunately, given the realities of the current employment market, the FAIR Plan has not been able to hire as quickly as it would like. Accordingly, it does not yet have an anticipated date when its claim department will be fully staffed. The FAIR Plan has terminated certain independent adjusting firms, and is making its claim examiners rather than independent adjusters responsible for status letters to insureds. The FAIR Plan is in the process of updating its claim software, is working on a number of other initiatives to make its claim process more efficient and compliant, and has advised the Department that the claim software update is a multi-year initiative.

Summary of the Department's Evaluation of CFPA's Response to 4(b): CFPA's response that it is working on building an internal claims department and has begun corrective measures does not provide estimated completion dates, clarification on procedural changes, training to be conducted, and the date or dates the corrective actions and changes were or will be implemented. Therefore, this is an unresolved issue that may result in administrative action.

5. In 34 instances, CFPA failed to conduct and diligently pursue a thorough, fair and objective investigation. The Department alleges these acts are in violation of CCR §2695.7(d) and are unfair practices under CIC §790.03(h)(3). In the files reviewed, the following situations were observed.

- (a)** In 21 instances, the IAs' inspections, reports, and/or claims status to either CFPA or the insureds were delayed for weeks to several months.
- (b)** In two instances, handling of the claims was delayed due to the steps that were taken by CFPA after the report of loss to verify that the named insureds had insurable interest in the property.
- (c)** In three instances, CFPA did not promptly investigate claims for Fair Rental Value (FRV). In the first instance, CFPA did not review the insured's FRV benefit for 245 days since its last payment to the insured. In the second instance, the insured was under a mandatory evacuation for four days, and was not paid the FRV benefit for 119 days. In the third instance, the insured relocated because the house had smoke odor and asbestos was present. CFPA did not investigate to determine whether FRV was owed.
- (d)** In two instances, CFPA received emails from the insureds advising that they had gotten a permit to rebuild the main structure and were working on other permits for the second house and the shop. CFPA did not investigate the additional expenses that were, or will be incurred by the insured under the Ordinance or Law Coverage.
- (e)** In one instance, the IA's report notes a concern that the smoke odor would require deodorization, removal of the attic insulation, HEPA vacuum of all the soot and ash, and then installation of new insulation. The IA provided photographs which it reported clearly showed the fire had burned very close to all sides of the structure, and strongly suggested there would be moderate to heavy soot in the attic space. However, CFPA did not inspect and estimate this potential damage caused from smoke.
- (f)** In one instance, CFPA did not investigate the FRV aspect of this claim upon notice that additional FRV was being requested due to the house being uninhabitable per the insured's attorney.
- (g)** In one instance, CFPA never confirmed the period of time that the insured was evacuated from the property.
- (h)** In one instance, 90 days after receiving the IA's second report advising that the insured had submitted additional damages for consideration of payment, CFPA sent a letter to the insured denying the claim because the insured had waited 47 days after the mandatory evacuation to report the claim.
- (i)** In one instance, CFPA failed to inspect the property, verify the contents claim, or assign an IA for over a year. After CDI's inquiry in this examination, CFPA renewed its efforts. The insured was contacted, insurable interest was resolved, an IA was assigned, the damages were assessed, and offers were made.

- (j) In one instance, the IA sent an email dated December 17, 2020 advising CFPA that the inspection was completed and the dwelling was in fact a total loss. The IA asked the CFPA adjuster if they would like a cause and origin expert to examine the loss to determine the cause of the fire. CFPA did not respond to this question until sending an email to the IA on March 4, 2021 asking if it was too late to proceed with the cause and origin expert. Additionally, the fire department report was not requested until approximately three months after the first notice of loss.

Summary of CFPA's Response:

- (a) In 20 instances, CFPA agrees with these findings. This claim handling does not meet CFPA's standards for diligent and timely claim investigation. CFPA will continue to ensure staff is aware of appropriate timelines to address claims related items. Both the independent adjusters and CFPA desk adjusters have been instructed to review all outstanding items on all claims that apply to possible coverage and CFPA will continue to push forward this training on future claims handling.

Due to the large volume of claims that were generated from the wildfires in 2020, CFPA utilized independent claims examiners to assist with the overflow. CFPA is aware of the issues with this external team of IAs, and is working on building a permanent team of internal examiners to limit the need for IAs and vendors.

CFPA states it understands there have been delays in obtaining reports timely from its independent adjusters. CFPA has been working on bringing in more quality independent adjusting firms to improve on the overall turnaround times for estimates and reports.

Under ordinary circumstances, CFPA would expect that the turnaround time for an estimate on a total loss claim would be less than 60 days. However, CFPA had approximately 14 different fires burning simultaneously in the same month, and delays in completing total loss estimates were likely to occur.

In one instance, CFPA disagrees with this finding. The initial file examiner was relocated to another position which resulted in the reassignment of this claim to a new file examiner. The new file examiner noted the file of several attempts to contact the insured to help move the claim forward. On January 25, 2021, the file examiner was able to reach the insured and it was established that revisions were needed to the estimate for Coverage A and C, which in turn caused a delay in the payments. It does appear once revisions were made the file examiner attempted contact with the insured on February 3, 2021, but was not able to actually contact the insured until

February 4, 2021. The file examiner submitted the authority request on February 4, 2021 and received authority approval on February 6, 2021. The file examiner processed the payment on February 18, 2021.

- (b)** In one instance, CFPA agrees with this finding. Typically, the Property Detail Report (PDR) and grant deed are procured when the claim is opened. In the instance, because the property is government-owned, and leased to the insured, there was no PDR or deed. It appears that both the desk adjuster and field adjuster overlooked this initially. This was a very unusual situation, and CFPA has reinforced to its desk adjusters that they need to obtain insurable interest information (including property ownership) at the beginning of each claim.

In one instance, CFPA disagrees with this finding. CFPA was waiting for the insured to produce the Grant Deed to verify the insurable interest in the property. The insured submitted it on July 2, 2021, and payment was made on July 12, 2021. CFPA relies on the information provided on the application by the broker of record. The broker submits an application on behalf of the applicant and is responsible for determining that the named insured on the application has an insurable interest in the property. If CFPA determines the named insured does not have an insurable interest, the resolution of the claim would depend on the specific circumstances regarding the insurable interest of the named insured and any other parties named on the policy at time of loss.

- (c)** In the first instance, CFPA disagrees with this finding. The independent adjuster stated that the fire was approximately four plus miles away from the risk. It is possible that the occasional smoke odor may be dependent on which direction the wind is blowing. CFPA further stated that since denial of the claim, the insured has made no further contact to complain of intermittent smoke odor. If the insured notifies CFPA that source of the smoke odor is within the air ducts, even after cleaning and deodorizing, CFPA stated it will conduct further investigation.

In the second instance, CFPA agrees with this finding. It appears the reason for the delay in payment was due to the claim being re-assigned to a new file examiner. CFPA recognizes the issues with utilizing IAs that do not work with the FAIR Plan on a regular basis and is working on building a permanent team of examiners who have a higher understanding of CFPA's policies and the compliance regulations.

In the third instance, CFPA reopened the claim and contacted the insured's daughter as a customer service measure in order to obtain additional information regarding the specific reasons for the move out and the length of time the insured was out of her home. During the repairs, the property tested positive for asbestos, and the insured's daughter stated she believes

the insured moved out because it was unhealthy. The investigation is pending additional documentation. If a supplemental payment is warranted, CFPA will document its file accordingly, issue the appropriate payment to the insured, and provide CDI with copies of the related documentation.

- (d)** In two instances, CFPA disagrees with these findings. CFPA reviewed the claim files and believes it completed a thorough, fair, and objective investigation. In these instances, the insureds did not provide documentation verifying their insurable interest in the property.
- (e)** CFPA agrees that deodorization should be paid for in this instance. Approximately four months after the loss, the insured initiated a claim for cleaning of the interior of the dwelling and the guest house, including the attic. The insured used his employees on site to repair the fire damaged appurtenant structures rather than preparing an estimate, and the IA asked the insured to submit his repair invoices. He also asked the insured to submit estimates for cleaning the attic and replacement of insulation, and to provide photos to document the loss. However, it does not appear there was a written follow up for this specific task. The IA should have been directed to conduct an inspection of the attic at the onset of the claim, and to perform a reinspection of the property when the insured initiated his claim for smoke damage. This IA firm is no longer handling CFPA's claims and CFPA involved staff are no longer with CFPA. Ongoing training will be provided to the current IAs and CFPA staff. CFPA wrote an estimate to deodorize the main house and guest house and issued an additional payment to the insured on December 28, 2021.
- (f)** In one instance, CFPA agrees with this finding. CFPA failed to notice that additional FRV was being requested due to the house being uninhabitable. This investigation is ongoing. A status letter was sent to the insured's attorney on January 8, 2022.
- (g)** In one instance, CFPA agrees with this finding. Additional FRV amount was calculated, and payment was issued. This IA firm was new to the FAIR Plan at the time, as was the independent desk examiner. Both no longer handle claims for the FAIR Plan.
- (h)** In one instance, CFPA agrees with this finding. The insured's smoke claim was improperly denied based on language that no longer applies under the Smoke Damage peril. As a result of the examination, the claim was re-opened and it was determined that the covered damages are under the insured's policy deductible.
- (i)** In one instance CFPA agrees with this finding. CFPA reopened the claim. Payments in the combined amount of \$6,864.81 were issued under Coverage A, Coverage B, Coverage C, debris removal, and fences.

- (j) In one instance, CFPA agrees with this finding. CFPA stated it expects its adjusters to be proactive when it comes to claim handling, and that the adjuster should have acted in a timelier manner.

In all instances in which these findings have been acknowledged, CFPA has provided the following response as corrective actions in its continuing efforts to improve regulatory compliance going forward:

CFPA is striving to do better in regard to claim handling. The wildfire events over the last few years have resulted in a dramatic increase to CFPA's book of business as mainstream insurance companies continue to tighten their underwriting guidelines for property owners in the brush areas. This growth has forced the FAIR Plan to become more reliant on hiring independent adjusting companies to handle the increasing volume of claims resulting from these events. CFPA has also had to rely on these companies to train and audit their own files, which has not produced the desired results.

To put CFPA in a better position to handle the workload and future wildfire events, CFPA are in the process of hiring approximately 40 additional adjusters. CFPA will directly supervise and train them to strictly adhere to standards that either meet or exceed the expectations of the Department of Insurance.

CFPA has put together an internal Quality Assurance Department consisting of Trainers and File Reviewers who will work together to identify and correct issues in claim files as they manifest. Performance goals and Quality Assurance audits will be structured to analyze and provide feedback for file quality monthly.

This additional hiring will reduce CFPA's reliance on independent adjusting companies to assist CFPA with its policyholders and give CFPA more control over the claim handling environment. Couple that with CFPA's new Quality Assurance Team guidelines and continued learning philosophy, CFPA will be in a position to improve claim handling and reduce errors in the future.

Unfortunately, given the realities of the current employment market, the FAIR Plan has not been able to hire as quickly as it would like. Accordingly, it does not yet have an anticipated date when its claim department will be fully staffed. The FAIR Plan has terminated certain independent adjusting firms, and is making its claim examiners rather than independent adjusters responsible for status letters to insureds. The FAIR Plan is in the process of updating its claim software, is working on a number of other initiatives to make its claim process more efficient and compliant, and has advised the Department that the claim software update is a multi-year initiative.

Summary of the Department's Evaluation of CFPA's Response: In one instance (a), CFPA's redeployment of personnel, and its reassignment of the claim to a new file handler resulted in an unreasonable delay in the handling of the insured's claim. In one instance (b), CFPA did not conduct and diligently pursue a thorough, fair

and objective investigation into the policyholder's insurable interest in the subject property which resulted in an unnecessary delay in concluding these claims. In one instance (c), CFPA's investigation was neither diligent, nor thorough and the insured's failure to complain should not be its standard for assessing regulatory compliance. In two instances (d), CFPA did not investigate additional expenses. CFPA's continuing efforts towards improved regulatory compliance, described in its response above, does not address the six identified instances for which CFPA continues to disagree. There has been no acknowledgement of these Department findings and no corrective measure to reinforce compliance. Additionally, CFPA's response that it is working on building an internal claims department and has begun corrective measures does not provide estimated completion dates, clarification on procedural changes, training to be conducted, and the date or dates the corrective actions and changes were or will be implemented. Therefore, this is an unresolved issue that may result in administrative action.

6. In 31 instances, CFPA failed to comply with the requirements of CCR §2695.7(b) as described below:

6(a). In 20 instances, CFPA failed, upon receiving proof of claim, to accept or deny the claim within 40 calendar days. In these instances, CFPA did not pay accepted claims that were made for food spoilage, FRV, structural damage, and personal contents. The Department alleges these acts are in violation of CCR §2695.7(b) and are unfair practices under CIC §790.03(h)(4).

Summary of CFPA's Response to 6(a): In 20 instances, CFPA agrees that upon receipt of proof of claim, CFPA did not accept or deny these claims within the regulatory timeframe of 40 days. CFPA's ongoing training of the examiners includes the issuing of any undisputed amounts as soon as possible or documenting why payment cannot be made at that time. CFPA reminded its staff of the importance in documenting the file and that payment must be issued once CFPA determines the amount owed. In some of these instances, CFPA's desk examiners were new to the FAIR Plan at the time, and were still getting familiar with the policy language and claims process.

In one of these instances, upon receiving proof of claim for the ongoing FRV (Fair Rental Value) CFPA did not timely accept the additional FRV. As a result of the examination, the claim was reviewed. The examiner re-adjusted the calculation and issued a supplemental payment based on the insured's statement that they occupy the property eight days each month. On January 11, 2022, CFPA issued a payment of \$10,458.72 to cover the FRV from March 7, 2021 through September 6, 2022.

CFPA recognizes the delays with its IAs, and is building a permanent team of internal examiners that have a higher understanding of the requirements of the California Fair Claim Settlement Practices Regulations, Insurance Codes, and other applicable California law, to reduce the need for outside support. CFPA has already put together an internal Quality Assurance Department consisting of Trainers and Quality Assurance Representatives who will work together to identify and correct issues in claim

files as they manifest. Performance goals and Quality Assurance audits will be structured to analyze and provide feedback for file quality on a monthly basis. Additionally, CFPA is hiring additional resources which will reduce its reliance on independent adjusting companies to assist CFPA with its policyholders and give CFPA more control over the claim handling environment. Coupled with the new Quality Assurance Team guidelines and continued learning philosophy, CFPA will be able to improve claim handling and reduce errors in the future. Unfortunately, given the realities of the current employment market, the FAIR Plan has not been able to hire as quickly as it would like. Accordingly, it does not yet have an anticipated date when its claim department will be fully staffed. The FAIR Plan has terminated certain independent adjusting firms, and is making its claim examiners rather than independent adjusters responsible for status letters to insureds. The FAIR Plan is in the process of updating its claim software, is working on a number of other initiatives to make its claim process more efficient and compliant, and has advised the Department that the claim software update is a multi-year initiative.

Summary of the Department's Evaluation of CFPA's Response to 6(a): CFPA's response that it is working on building an internal claims department and has begun corrective measures does not provide estimated completion dates, clarification on procedural changes, training to be conducted, and the date or dates the corrective actions and changes were or will be implemented. Therefore, this is an unresolved issue that may result in administrative action.

6(b). In nine instances, CFPA failed to provide in writing the reasons for the denial of the claim in whole or in part including the factual and legal bases for each reason given. The Department alleges these acts are in violation of CCR §2695.7(b)(1) and are unfair practices under CIC §790.03(h)(13).

Summary of CFPA's Response to 6(b): In all instances, CFPA agrees that it did not deny claims in writing when it should have. CFPA will continue to provide training on California Fair Claims Settlement Practices regulations to the independent examiners, supervisors and managers currently handling claims.

6(c). In two instances, CFPA failed to include a statement in its claim denial that, if the claimant believes all or part of the claim has been wrongfully denied or rejected, he or she may have the matter reviewed by the California Department of Insurance. The Department alleges these acts are in violation of CCR §2695.7(b)(3) and are unfair practices under CIC §790.03(h)(3).

Summary of CFPA's Response to 6(c): In both instances, CFPA agrees. As a result of these findings, CFPA sent appropriate denial letters with reference to CDI.

7. In 27 instances, CFPA failed to comply with the requirements of CIC §§2051, CIC §2051.5 and CCR §2695.9(f) as described below:

7(a). In 13 instances, CFPA failed to document in the claim file all justification for the adjustment of the amount claimed because of betterment, depreciation, or salvage. Any adjustment for betterment or depreciation shall reflect a measurable difference in market value attributable to the condition and age of the property. In these instances, the basis of all depreciation is not fully explained in the file notes, on the estimate, or in photographs secured (if any) to include the specifics or details on the actual condition of the items depreciated. The files and estimates were void of notes detailing how the adjustment for depreciation reflects a measurable difference in market value attributable to the condition and age of the property. The justification for all of the depreciation taken could not be located in the claim files. The estimates show a line by line deduction for depreciation; however, there was no supporting evidence in the claim files to justify how CFPA determined applicable depreciation taken on these claims. In addition, the rationale for identifying the condition as average across all items was not noted in some instances.

It is understood the independent adjuster secured photographs and met with the insured in most instances; however, there is no explanation in the file that addresses the condition of the depreciated items, other than what is identified on the estimate. Further, an inspection and the taking of photographs is only one step in determining condition. The other component is the analysis of the photographs and inspection, including the rationale for the condition whether it relates to the dwelling or personal property. This would include documenting the content of what was discussed with the insured in the claim file and the adjuster's documentation of the observed condition of the items subject to depreciation. If it cannot be observed, the insured would then be the source of obtaining this information. Additionally, the issue is not necessarily whether the depreciation was appropriately withheld. The issue is that there was no justification in the claim file for what was depreciated. Further, regardless of whether a letter and/or an estimate state or indicate that depreciation was based on age and condition, there has to be justification for the basis of the depreciation taken in the file, which will typically include comments or notes documented in the claim file.

The Department alleges these acts are in violation of CIC §§2051 and 2051.5, and CCR §2695.9(f), and are unfair practices under CIC §790.03(h)(3).

Summary of CFPA's Response to 7(a): In seven instances, CFPA agrees with these findings. In two of the seven instances, CFPA re-evaluated the depreciation taken and as a result issued payments, on December 29, 2021, to one insured in the amount of \$3,314.73, and to another insured in the amount of \$5,846.15. In two of the seven instances, the IA did not include depreciation comments; however, CFPA believes the IA's photographs depict the overall condition of the property.

In one of the seven instances, CFPA states condition was not requested given that the insured provided information in their personal property inventory list. While the insured did identify the condition on several items, the insured left this blank on several others. Any items that were not notated were considered to be average, unless the age of the item indicated that it was new. New and perishable items were not depreciated. CFPA acknowledges it should have followed up with the insured for the condition of the

items left blank. As a result of this finding, CFPA indicated it will follow up with the insured. Pending the insured's response, no supplemental payment has yet been issued.

In one of the seven instances, CFPA acknowledges that the IA firm utilized for personal property did not include the life expectancy on their personal property form. However, the depreciation is based on the information submitted by the insured and taken into consideration within the vendor program for personal property. CFPA utilizes XactContents, the program for personal property, and Xactimate, the program for the dwelling, for input of personal property items and structural components with the vendor, Xactware.

In one of the seven instances, while CFPA acknowledges this finding, depreciation was not applied due to the coverage limits and CFPA's failure to properly depreciate this claim worked in the insured's favor.

In six instances, CFPA disagrees with these findings. CFPA states the depreciation was appropriately applied. The age of items would only have been derived from various conversations the adjuster had with the insured including the condition that may be evident during the inspection of the property. Essentially, age and condition are determined per information CFPA receives from the insured as well as the inspection of the property. Life expectancy is also determined per the values allotted in the Xactware program for average useful life of all trades where depreciation is applicable. Additionally, CFPA indicated the settlement letter and/or the estimate explicitly states that depreciation applied was based on the age and the condition. In one of these six instances, even though CFPA disagreed with this finding, it revised the estimate changing the condition to above average and issued an additional payment of \$373.61 to the insured.

Nonetheless, for all instances identified above, CFPA states at the time some of the claims were handled, clear depreciation guidelines were not set in place for proper claims handling. CFPA has since affected new guidelines to determine and apply depreciation as well as to communicate how depreciation was taken to the insured in its estimates moving forward. CFPA now requires greater detail in all estimates to include a more detailed breakdown of all items being depreciated so that it is clear. These guidelines were set in place on or about February of 2021. CFPA also implemented new procedural changes by requiring all depreciation calculations to be noted in all estimates as well as clear documentation that conversations have taken place with the insured at time of inspection regarding age, life, and condition of items. CFPA will continue to work on improving this process by utilizing its new training and Quality Assurance department for continuing education on this topic as well as many others related to compliance.

In light of AB188, which amended Insurance Code section 2051(b) effective January 1, 2020, the FAIR Plan is reviewing all claims where depreciation was taken between January 1, 2020 and February 28, 2021, when CFPA corrected its depreciation

guidelines. Where depreciation was incorrectly applied, the FAIR Plan will issue refunds to insureds including interest. The FAIR Plan has reviewed 305 of 373 claims, to date, and estimates that it is approximately 82% through the process. CFPA anticipates completing this process by May 31, 2022, and will report its findings to the Department.

Summary of the Department's Evaluation of CFPA's Response to 7(a): In the one instance that CFPA followed up with the insured for information on the individual items for which condition was previously not identified, it has not provided the results of the additional investigation and follow up. Until CFPA has provided the Department with the outcome of the reopened claim, this is an unresolved issue that may result in administrative action.

Although CFPA indicates new procedural changes were implemented (presumably after February of 2021), CFPA has not provided the Department with the date upon which the procedures have been executed nor has CFPA provided the Department with a copy of the new procedures to address regulatory compliance as a result of this examination.

7(b). In 10 instances, CFPA applied betterment or depreciation to property not normally subject to repair and replacement during the useful life of the property. In each instance, CFPA applied depreciation to one or more structural components not normally subject to repair or replacement during the useful life of the structure absent some known reason to do so, such as damage sustained in an insurance loss. Additionally, the file notes at issue were void of any specific documentation regarding the condition of the items that would warrant betterment or depreciation. The Department alleges these acts are in violation of CCR §2695.9(f) and are unfair practices under CIC §790.03(h)(5).

Summary of CFPA's Response to 7(b): CFPA agrees depreciation was taken on components that are not normally subject to repair or replacement during the useful life of the property in all identified instances. As a result of these findings, CFPA reviewed these 10 instances, and issued payments totaling \$58,943.91 to all impacted insureds.

Based on the guidelines in place during the examination review period, depreciation may have been inappropriately applied to some items. To address regulatory compliance, CFPA requires all future estimates to contain the basis for depreciation. In addition, CFPA requires all field adjusters to confirm their Xactimate settings are correct in that they are not set to depreciate any items not normally subject to depreciation.

The wildfire events over the last few years have resulted in a dramatic increase to CFPA's book of business as mainstream insurance companies continue to tighten their underwriting guidelines for property owners in the brush areas. This growth has forced CFPA to become more reliant on hiring independent adjusting companies to

handle the increasing volume of claims. CFPA also had to rely on IA's to train their adjusters and to audit their own files, which has not produced the desired results.

In addition, to put CFPA in a better position to address regulatory compliance in handling the claims workload and future wildfire events, CFPA is in the process of hiring approximately 40 additional adjusters. CFPA will directly supervise and train them to standards that meet and exceed the CDI expectations. CFPA is also drafting Claim Handling Expectations that require a strict adherence to all CDI guidelines.

CFPA has already put together an internal Quality Assurance Department consisting of Trainers and Quality Assurance Representatives who will work together to identify and correct issues in claim files as they manifest. Performance goals and Quality Assurance audits will be structured to analyze and provide feedback for file quality monthly.

The additional hiring will reduce reliance on independent adjusting companies to assist with CFPA's policyholders and give CFPA more control over the claim handling environment. These efforts coupled with CFPA's new Quality Assurance Team guidelines and continued learning philosophy, CFPA will be able to improve claim handling and reduce errors in the future.

Unfortunately, given the realities of the current employment market, the FAIR Plan has not been able to hire as quickly as it would like. Accordingly, it does not yet have an anticipated date when its claim department will be fully staffed. The FAIR Plan has terminated certain independent adjusting firms, and is making its claim examiners rather than independent adjusters responsible for status letters to insureds. The FAIR Plan is in the process of updating its claim software, is working on a number of other initiatives to make its claim process more efficient and compliant, and has advised the Department that the claim software update is a multi-year initiative.

Instances in which depreciation was taken on items not normally subject to repair or replacement during their useful life will be corrected as part of the review of past claims described in CFPA's response to items 7(a).

Summary of the Department's Evaluation of CFPA's Response to 7(b): CFPA's response that it is working on building an internal claims department and has begun corrective measures does not provide estimated completion dates, clarification on procedural changes, training to be conducted, and the date or dates the corrective actions and changes were or will be implemented. Therefore, this is an unresolved issue that may result in administrative action.

7(c). In three instances, CFPA failed, in adjusting the amount claimed because of betterment, depreciation, or salvage, to fully explain the basis for the adjustment to the claimant in writing. CFPA has not demonstrated that it provided claimants with a written explanation of the basis for depreciation in these identified claim files. In the first instance, CFPA's payment letter does not provide the insured with an

accurate description of the non-recoverable depreciation that was deducted from the claim. In the second instance, CFPA's inventory list, which it had the insured sign, has no clear explanation of the percentage amounts deducted. In the third instance, the estimate CFPA sent to the insured did not have any explanation for the deductions applicable to the age, useful life, or condition of the insured's property. The Department alleges these acts are in violation of CCR §2695.9(f) and are unfair practices under CIC §790.03(h)(3).

Summary of CFPA's Response to 7(c): CFPA agrees with the findings in all three instances. In the first instance, CFPA states that a follow-up explanation should be sent to the insured advising them of the settlement breakdown. In the second instance, CFPA acknowledges it did not provide a clear explanation of how the depreciation was calculated which resulted in an overpayment to the insured. In the third instance, CFPA acknowledges it did not provide the insured (in written format) the basis for depreciation contained in the estimate.

To address regulatory compliance, CFPA is transitioning its business model to move away from its previous method of operation into one that will give CFPA more control over the claim handling quality in the future.

7(d). In one instance, CFPA applied depreciation to the expense of labor necessary to repair, rebuild, or replace covered property. The expense of labor is not a component of physical depreciation. The Department alleges this act is in violation of CCR §2695.9(f)(1) and is an unfair practice under CIC §790.03(h)(5).

Summary of CFPA's Response to 7(d): CFPA agrees that the expense of labor was depreciated in this instance. As a result of this finding, CFPA issued payment to the insured in the amount of \$2,785.84.

8. In 25 instances, CFPA failed to disclose all benefits, coverage, time limits or other provisions of the insurance policy that may apply to the claim presented by the claimant. When additional benefits might reasonably be payable under an insured's policy upon receipt of additional proofs of claim, the insurer shall immediately communicate this fact to the insured and cooperate with and assist the insured in determining the extent of the insurer's additional liability. In these instances, CFPA failed to explain coverage benefits, how to recover the depreciation holdback, that FRV may apply to the claim and/or how the insured's FRV benefit was calculated.

Summary of CFPA's Response: CFPA agrees with these findings that benefits and/or coverages were not fully explained. CFPA is working on building a permanent internal claims department with examiners that are trained on California's regulatory compliance guidelines in an effort to not have to resort to utilizing independent adjusting claims staff. Further, CFPA is currently working on standardizing its payment and closing letters.

In addition, to put CFPA in a better position to address regulatory compliance in handling the claims workload and future wildfire events, CFPA is in the process of hiring approximately 40 additional adjusters. CFPA will directly supervise and train them to standards that meet and exceed the Department of Insurance expectations. CFPA is also drafting Claim Handling Expectations that require a strict adherence to all CDI guidelines.

CFPA has already put together an internal Quality Assurance Department consisting of Trainers and Quality Assurance Representatives who will work together to identify and correct issues in claim files as they manifest. Performance goals and Quality Assurance audits will be structured to analyze and provide feedback for file quality monthly.

The additional hiring will reduce CFPA's reliance on independent adjusting companies to assist with CFPA's policyholders and give CFPA more control over the claim handling environment. These efforts coupled with CFPA's new Quality Assurance Team guidelines and continued learning philosophy will improve claim handling and reduce errors in the future.

Unfortunately, given the realities of the current employment market, the FAIR Plan has not been able to hire as quickly as it would like. Accordingly, it does not yet have an anticipated date when its claim department will be fully staffed. The FAIR Plan has terminated certain independent adjusting firms, and is making its claim examiners rather than independent adjusters responsible for status letters to insureds. The FAIR Plan is in the process of updating its claim software, is working on a number of other initiatives to make its claim process more efficient and compliant, and has advised the Department that the claim software update is a multi-year initiative.

Summary of the Department's Evaluation of CFPA's Response: CFPA's response that it is working on building an internal claims department and has begun corrective measures does not provide estimated completion dates, clarification on procedural changes, training to be conducted, and the date or dates the corrective actions and changes were or will be implemented. Therefore, this is an unresolved issue that may result in administrative action.

9. In 21 instances, CFPA failed, upon acceptance of the claim, to tender payment within 30 calendar days. In all instances, CFPA did not issue payments on undisputed repair estimates, claims for FRV benefits, recoverable depreciation, or a benefit under ordinance and law coverage within regulatory timeframes.

In 13 instances, CFPA did not issue payment on agreed estimates for structural damages. In one of these instances, CFPA waited 112 days to indemnify the insured for the costs of repair. In another, CFPA received the first IA's report and estimated damages, but waited 66 days to issue the IA's payment recommendation of \$139,617.08. In another of these instances, the claim was delayed because of steps taken by CFPA to verify insurable interest prior to payment.

In four instances, CFPA did not issue timely payment for FRV. In the first instance, CFPA did not issue the insured's 10-day FRV payment until 97 days after the insured returned to the property. In the second instance, the insured's primary structure was burned to the ground. The IA's report recommended an advanced payment of FRV for six months in the amount of \$11,925.00, but payment was not issued for 152 days. In the third instance, the IA reported on November 14, 2020 that two units were red tagged and were not inhabitable until electrical wiring was corrected, but the first FRV payment was not issued for 69 days. In the fourth instance, due to the severity of the loss, it was evident that FRV was still in effect, but CFPA did not investigate FRV for 245 days after its last payment.

In two instances, CFPA did not issue timely reimbursements for recoverable depreciation.

In one instance, CFPA did not issue a timely payment for the balance of the insured's personal property limit of coverage. The insured's personal property list received on August 17, 2021 was not paid until October 20, 2021, 64 calendar days later.

In one instance, the IA reported that the insured's repairs under Ordinance and Law coverage were underway over seven months prior to CFPA's payment on June 30, 2021.

The Department alleges these acts are in violation of CCR §2695.7(h) and are unfair practices under CIC §790.03(h)(5).

Summary of CFPA's Response: In 20 instances, CFPA agrees with these findings. CFPA did not find any basis, or substantive support for the delayed payment in the claim files.

The FAIR Plan used desk examiners from independent adjusting companies in order to respond to the high volume of catastrophe claims generated from the 2020 Northern California wildfires. Some had difficulty grasping the FAIR Plan's philosophy of claims handling in accordance with California regulations. The FAIR Plan provides training for all incoming field and desk examiners on the FAIR Plan policy, compliance, and procedures, and will continue to do so as it onboards new examiners and adjusters. Additional training is also administered on an individual basis as those needs arise.

The corrective action will be to retrain CFPA's adjusters to better prepare them for any future similar circumstances. CFPA is building a permanent team of examiners who have a higher understanding of the FAIR Plan's policies and regulatory compliance guidelines. CFPA understands the delays with both the independent examiners and the field adjusters and the lack of quality with utilizing subpar independent claims staff.

The wildfire events over the last few years have resulted in a dramatic increase to CFPA's book of business as mainstream insurance companies continue to tighten their underwriting guidelines for property owners in the brush areas. This growth forced CFPA to become more reliant on hiring independent adjusting companies to handle the increasing volume of claims. CFPA also had to rely on these companies to train and audit their own files, which has not produced the desired results.

In addition, to put CFPA in a better position to address regulatory compliance in handling the claims workload and future wildfire events, CFPA is in the process of hiring approximately 40 additional adjusters. CFPA will directly supervise and train them to standards that meet and exceed the Department of Insurance expectations. CFPA is also drafting Claim Handling Expectations that require a strict adherence to all CDI guidelines.

CFPA has already put together an internal Quality Assurance Department consisting of Trainers and Quality Assurance Representatives who will work together to identify and correct issues in claim files as they manifest. Performance goals and Quality Assurance audits will be structured to analyze and provide feedback for file quality monthly.

The additional hiring will reduce CFPA's reliance on independent adjusting companies to assist with CFPA's policyholders and give CFPA more control over the claim handling environment. These efforts coupled with its new Quality Assurance Team guidelines and continued learning philosophy will help to improve claim handling and reduce errors in the future.

Unfortunately, given the realities of the current employment market, the FAIR Plan has not been able to hire as quickly as it would like. Accordingly, it does not yet have an anticipated date when its claim department will be fully staffed. The FAIR Plan has terminated certain independent adjusting firms, and is making its claim examiners rather than independent adjusters responsible for status letters to insureds. The FAIR Plan is in the process of updating its claim software, is working on a number of other initiatives to make its claim process more efficient and compliant, and has advised the Department that the claim software update is a multi-year initiative.

In one instance, CFPA disagrees with the violation cited as CFPA wanted to make sure the insured had the opportunity to provide a listing of all personal property items owned and then conduct the valuation to obtain an accurate value for each item. This can only be done by having someone with content valuation experience complete the valuation of all items. CFPA also must ensure that the items claimed are personal property items that are covered under the policy and ensure no items are duplicated on the adjuster's structural estimate if the insured does include structural items.

Summary of the Department's Evaluation of CFPA's Response: In the instance in which CFPA disagrees with the finding, the insured's incomplete contents list and IA reports both showed that damages exceeded relatively low limits of coverage

for contents. CFPA should not have waited for a completed contents list causing an unnecessary delay in the payment of the policy limits. Additionally, CFPA's response that it is working on building an internal claims department and has begun corrective measures does not provide estimated completion dates, clarification on procedural changes, training to be conducted, and the date or dates the corrective actions and changes were or will be implemented. Therefore, this is an unresolved issue and may result in an administrative action.

10. In 16 instances, CFPA attempted to settle a claim by making a settlement offer that was unreasonably low. In seven instances, CFPA underpaid and/or miscalculated the FRV amount owed. In four instances, CFPA did not absorb the deductible when damages exceeded the limits. In one instance, CFPA incorrectly subtracted the FRV amount from the payment of other structures. In one instance, CFPA did not pay what was owed based on revised estimates from the IA. In one instance, CFPA applied an incorrect policy limit to Coverage B. In one instance, CFPA incorrectly applied depreciation to something that would be considered new. In the final instance, CFPA removed numerous items from the insured's contents list.

The Department alleges these acts are in violation of CCR §2695.7(g) and are unfair practices under CIC §790.03(h)(5).

Summary of CFPA's Response: CFPA agrees with these findings in all instances. As a result, CFPA issued payments totaling \$58,778.94 to all insureds on the identified claim files.

The wildfire events over the last few years have resulted in a dramatic increase to CFPA's book of business as mainstream insurance companies continue to tighten their underwriting guidelines for property owners in the brush areas. This growth has forced CFPA to become more reliant on hiring independent adjusting companies to handle the increasing volume of claims. CFPA also had to rely on these companies to train and audit their own files, which has not produced the desired results.

In addition, to put CFPA in a better position to address regulatory compliance in handling the claims workload and future wildfire events, CFPA is in the process of hiring approximately 40 additional adjusters. CFPA will directly supervise and train them to standards that meet and exceed the Department of Insurance expectations. CFPA is also drafting Claim Handling Expectations that require a strict adherence to all CDI guidelines.

As a result of this examination, CFPA has put together an internal Quality Assurance Department consisting of Trainers and Quality Assurance Representatives who will work together to identify and correct issues in claim files as they manifest. Performance goals and Quality Assurance audits will be structured to analyze and provide feedback for file quality monthly.

The additional hiring will reduce the reliance on independent adjusting

companies to assist with CFPA's policyholders and give CFPA more control over the claim handling environment. With these efforts coupled with CFPA's new Quality Assurance Team guidelines and continued learning philosophy, CFPA will be able to improve claim handling and reduce errors in the future.

Unfortunately, given the realities of the current employment market, the FAIR Plan has not been able to hire as quickly as it would like. Accordingly, it does not yet have an anticipated date when its claim department will be fully staffed. The FAIR Plan has terminated certain independent adjusting firms, and is making its claim examiners rather than independent adjusters responsible for status letters to insureds. The FAIR Plan is in the process of updating its claim software, is working on a number of other initiatives to make its claim process more efficient and compliant, and has advised the Department that the claim software update is a multi-year initiative.

Summary of the Department's Evaluation of CFPA's Response: CFPA's response that it is working on building an internal claims department and has begun corrective measures does not provide estimated completion dates, clarification on procedural changes, training to be conducted, and the date or dates the corrective actions and changes were or will be implemented. Therefore, this is an unresolved issue that may result in administrative action.

11. In 12 instances, CFPA misled a claimant as to the applicable statute of limitations. In these instances, CFPA's letters did not mention the extended statute of limitations per CIC §2071(a) due to a declared state of emergency. The Department alleges these acts are in violation of CIC §790.03(h)(15).

Summary of CFPA's Response: In 11 instances, CFPA agrees with these findings. The state of emergency language extending the statute of limitations was not cited in the closing letter to the insured. CFPA recognized that this had not been occurring and has since trained its examiners, supervisors, and independent adjusters to include the extension for the statute of limitations from 12 months to 24 months on losses where a state of emergency has been declared.

Additionally, the FAIR Plan is in the process of standardizing its letters to meet its own guidelines and compliance regulations. CFPA has changed its process and now both cover letter and notice are uploaded to the file. CFPA has also reminded its independent adjusters about the importance of citing the correct suit limitation provision.

The wildfire events over the last few years have resulted in a dramatic increase to CFPA's book of business as mainstream insurance companies continue to tighten their underwriting guidelines for property owners in the brush areas. This growth has forced CFPA to become more reliant on hiring independent adjusting companies to handle the increasing volume of claims. CFPA also had to rely on these companies to train and audit their own files, which has not produced the desired results.

In addition, to put CFPA in a better position to address regulatory compliance in

handling the claims workload and future wildfire events, CFPA is in the process of hiring approximately 40 additional adjusters. CFPA will directly supervise and train them to standards that meet and exceed the Department of Insurance expectations. CFPA is also drafting Claim Handling Expectations that require a strict adherence to all requirements of the California Fair Claim Settlement Practices Regulations, Insurance Codes, and other applicable California law.

As a result of this examination, CFPA has already put together an internal Quality Assurance Department consisting of Trainers and Quality Assurance Representatives who will work together to identify and correct issues in claim files as they manifest. Performance goals and Quality Assurance audits will be structured to analyze and provide feedback for file quality monthly.

The additional hiring will reduce reliance on independent adjusting companies to assist with CFPA's policyholders and give CFPA more control over the claim handling environment. These efforts coupled with CFPA's new Quality Assurance Team guidelines and continued learning philosophy, will allow CFPA to improve claim handling and reduce errors in the future.

Unfortunately, given the realities of the current employment market, the FAIR Plan has not been able to hire as quickly as it would like. Accordingly, it does not yet have an anticipated date when its claim department will be fully staffed. The FAIR Plan has terminated certain independent adjusting firms, and is making its claim examiners rather than independent adjusters responsible for status letters to insureds. The FAIR Plan is in the process of updating its claim software, is working on a number of other initiatives to make its claim process more efficient and compliant, and has advised the Department that the claim software update is a multi-year initiative.

In one instance, CFPA disagrees with this finding. CFPA states the insured's property is well over 20 miles from where the wildfire started and the insured was not under mandatory evacuation as a result of this fire. As such, the insured was not in an area affected by the declared state of emergency. There was no evidence of smoke or ash. The claimed loss was reported months after the wildfire. As a result, the FAIR Plan does not agree that the claimed loss was related to a state of emergency, and the FAIR Plan does not believe the extended timeframe applies in this case.

Summary of the Department's Evaluation of CFPA's Response: In the instance in which CFPA disagrees, the claim was filed in relation to a wildfire for which the governor had declared a state of emergency. Regardless of the loss property's location in relation to the fire, the absence of a mandatory evacuation order, CFPA's determination of no smoke damage, and late reporting; notification of the extended statute of limitations was owed pursuant to CIC §2071(a). None of these reasons relieve CFPA of the responsibility to notify insureds of the appropriate statute of limitations date. Additionally, CFPA's response that it is working on building an internal claims department and has begun corrective measures does not provide estimated completion dates, clarification on procedural changes, training to be conducted, and the

date or dates the corrective actions and changes were or will be implemented. Therefore, this is an unresolved issue that may result in administrative action.

12. In seven instances, CFPA settled the claim on the basis of a written scope and/or estimate without supplying the insured with a copy of each document upon which the settlement was based. The Department alleges these acts are in violation of CCR §2695.9(d) and are unfair practices under CIC §790.03(h)(3).

Summary of CFPA's Response: In all instances, CFPA agrees with these findings. CFPA could not verify that these estimates were provided to the insureds. CFPA has continual training to ensure files are handled correctly. Due to the large volume of claims that were generated from the wildfires in 2020, CFPA utilized independent claims examiners to assist with the workflow. CFPA states it is aware of the issues with the external team, and is working on building a permanent team of internal examiners to limit the need for outside resources and improve compliance with the requirements of California law. Unfortunately, given the realities of the current employment market, the FAIR Plan has not been able to hire as quickly as it would like. Accordingly, it does not yet have an anticipated date when its claim department will be fully staffed. The FAIR Plan has terminated certain independent adjusting firms, and is making its claim examiners rather than independent adjusters responsible for status letters to insureds. The FAIR Plan is in the process of updating its claim software, is working on a number of other initiatives to make its claim process more efficient and compliant, and has advised the Department that the claim software update is a multi-year initiative.

Summary of the Department's Evaluation of CFPA's Response: CFPA's response that it is working on building an internal claims department and has begun corrective measures does not provide estimated completion dates, clarification on procedural changes, training to be conducted, and the date or dates the corrective actions and changes were or will be implemented. Therefore, this is an unresolved issue that may result in administrative action.

13. In six instances, CFPA failed to comply with the requirements of CCR §2695.5(e) as described below:

13(a). In five instances, CFPA failed to provide necessary forms, instructions, and reasonable assistance within 15 calendar days. In one instance, CFPA did not provide timely assistance to a public adjuster representing the insured who requested information regarding coverage. In four instances, the insureds were not provided with inventory sheets for contents claims. The Department alleges these acts are in violation of CCR §2695.5(e)(2) and are unfair practices under CIC §790.03(h)(3).

Summary of CFPA's Response to 13(a): CFPA agrees with these findings. Due to the large volume of claims that were generated from the wildfires in 2020, CFPA utilized independent claims examiners to assist with the workflow. CFPA is aware of the issues with the external team, and is working on building a permanent team of

internal examiners to limit the need for outside resources. Additionally, CFPA reminded its field adjusters and claims examiners that contents inventory worksheets, with instructions, are to be provided to an insured any time a contents claim is involved. Unfortunately, given the realities of the current employment market, the FAIR Plan has not been able to hire as quickly as it would like. Accordingly, it does not yet have an anticipated date when its claim department will be fully staffed. The FAIR Plan has terminated certain independent adjusting firms, and is making its claim examiners rather than independent adjusters responsible for status letters to insureds. The FAIR Plan is in the process of updating its claim software, is working on a number of other initiatives to make its claim process more efficient and compliant, and has advised the Department that the claim software update is a multi-year initiative.

Summary of the Department's Evaluation of CFPA's Response to 13(a):

CFPA's response that it is working on building an internal claims department and has begun corrective measures does not provide estimated completion dates, clarification on procedural changes, training to be conducted, and the date or dates the corrective actions and changes were or will be implemented. Therefore, this is an unresolved issue that may result in administrative action.

13(b). In one instance, CFPA failed to begin any necessary investigation of the claim within 15 calendar days. In this instance, the insured was having heart surgery on December 16, 2020 and told CFPA the day before that he wanted his agent to handle the claim for him, but there was no contact until the agent called for an update 27 days later on January 12, 2021. The Department alleges this act is in violation of CCR §2695.5(e)(3) and is an unfair practice under CIC §790.03(h)(3).

Summary of CFPA's Response to 13(b): CFPA agrees with this finding. The IA desk examiner should have followed up with the insured's broker to determine available options for an inspection.

14. In five instances, CFPA failed to respond to communications within 15 calendar days. In one instance, CFPA failed to respond to the insured's inquiry regarding Ordinance and Law coverage. In one instance, CFPA did not respond to the insured's questions about personal property and food spoilage. In three instances, CFPA did not provide a timely response to requests from the insureds' attorneys. The Department alleges these acts are in violation of CCR §2695.5(b) and are unfair practices under CIC §790.03(h)(2).

Summary of CFPA's Response: CFPA agrees with these findings in all instances. To address regulatory compliance going forward, CFPA continues to provide ongoing training to its staff examiners, independent examiners, field adjusters, and supervisors on compliance with the California Fair Claims Settlement Practices Regulations. Part of this ongoing examiner training includes the importance of properly documenting the claim file. Additionally, all examiners were reminded that requests for claim-related documents must be responded to within 15 days of receipt.

15. In five instances, CFPA persisted in seeking information not reasonably required for or material to the resolution of a claims dispute. In two instances, CFPA advised insureds that it was waiting for inventory sheets to resolve their claims when those documents had been in CFPA's possession for weeks. In each instance, CFPA persisted in seeking information it already had.

In three instances, CFPA requested complete detailed inventory lists for contents claims with relatively low limits of coverage. In these three instances, CFPA sought the full total loss lists that were not reasonably required for or material to the resolution of this portion of the claims. CFPA was aware either by the list the insured had already prepared or reports from the IAs that the damages likely exceeded the insured's limits for personal contents coverage.

The Department alleges these acts are in violation of CCR §2695.7(d) and are unfair practices under CIC §790.03(h)(3).

Summary of CFPA's Response: In two instances, CFPA agrees. In these instances, either the desk examiner or the field adjuster did not realize the inventory sheets had already been submitted by the insured.

In three instances, CFPA disputes the findings. It is important that losses be completely documented regardless of limits. If these insureds were to have another loss or a concurrent loss, the completed lists would serve as documentation of the extent of the damaged property. Secondly, tax deductions may be available for casualty and theft losses relating to home, household items, and vehicles on the federal income tax return.

CFPA pays an advance up front and then requests a full itemized list allowing the insured the opportunity to receive the maximum benefits available based on a complete inventory. The list is submitted for evaluation to determine both the actual cash value and the replacement cost value of the items. The value of the items must be verified before it is determined that the replacement cost amounts are accurate. Therefore, it is necessary to have someone conduct a valuation of the items to determine the actual cash value and replacement cost value of all items as well as confirm all items are covered under the policy. The insured will be paid the actual cash value amount up front (which may be less than the limits) and must submit replacement receipts for items in order to recover replacement cost benefits.

For the reasons indicated above, CFPA does not agree that a full total loss list was not required. CFPA believes that the CDI's current mandate to issue an amount equal to 30% of the insured's dwelling limit for contents will minimize the need for extended contents inventories.

Summary of the Department's Evaluation of CFPA's Response: In the three instances in which CFPA disagrees with these findings, CFPA was in possession and had already received information from the insured indicating the limits would be

exhausted. However, CFPA continued to seek the full total loss lists that were not reasonably required for or material to the resolution of this portion of the claims. Possible tax deductions for the insured does not justify the insurer's delay in paying contents limits. The insured's incomplete contents list and IA reports both showed that damages exceeded relatively low limits of coverage for contents. CFPA should not have waited for completed contents list to pay policy limits. Therefore, this is an unresolved issue and may result in an administrative action.

16. In four instances, CFPA misrepresented to claimants pertinent facts or insurance policy provisions relating to any coverages at issue. In two instances, CFPA sent letters which misstated the insured's policy limits. In two instances, the IA misinformed the insureds about their reporting status to CFPA. The Department alleges these acts are in violation of CIC §790.03(h)(1).

Summary of CFPA's Response: CFPA agrees with these findings. In the first two instances, a claim manager who is no longer with the FAIR Plan prepared the incorrect language in these letters. Although the letters could have been more accurate, there was no intent to mislead the insured, as demonstrated by the enclosure of the Declarations page. In the second two instances, there were issues with the IAs involved with those claims. CFPA no longer uses some of the IAs that adjusted claims reviewed in this examination. CFPA is hiring additional claims staff, and will directly supervise and train them to standards that meet and exceed the Department of Insurance expectations.

Summary of the Department's Evaluation of CFPA's Response: CFPA's response that it is hiring additional claims staff and will directly supervise and train does not provide estimated completion dates, clarification on procedural changes and details of training to be conducted. Therefore, this is an unresolved issue that may result in administrative action.

17. In four instances, CFPA failed to maintain all documents, notes and work papers which reasonably pertain to each claim in such detail that pertinent events and the dates of the events can be reconstructed. In two instances, CFPA did not document its discussions about claims with the insured. In one instance, an IA report was missing from the file. In one instance, a letter of representation was missing from the file. The Department alleges these acts are in violation of CCR §2695.3(a) and are unfair practices under CIC §790.03(h)(3).

Summary of CFPA's Response: CFPA agrees with these findings. CFPA was unable to locate documents or documentation in these claim files. CFPA continues to provide ongoing training to its staff examiners, independent examiners, field adjusters,

and supervisors on compliance with California Fair Claims Settlement Practices Regulations. Part of the ongoing examiner training includes the importance of properly documenting the claim file.

18. In four instances, CFPA failed to share subrogation recoveries on a proportionate basis with the first party claimant. CFPA received money in subrogation, but did not refund the insureds for the amounts owed. The Department alleges these acts are in violation of CCR §2695.7(q) and are unfair practices under CIC §790.03(h)(5).

Summary of CFPA's Response: CFPA agrees in all instances. CFPA's resources were limited as CFPA was also reviewing claims, and preparing responses on the large volume of debris removal invoices received on total loss claims. Between December 27, 2021 and January 3, 2022, CFPA issued deductible reimbursement checks to all four insureds for the combined amount of \$952.50.

19. In three instances, CFPA failed to provide the claimant with a copy of the most recent notice describing the most significant California laws pertaining to property insurance policies, including those related to a declared state of emergency, as defined in Section 8558 of the Government Code, or other emergency declared by a public official no later than 15 calendar days from the date on which the insurer received notice of the claim. The Department alleges these acts are in violation of CIC §14046(b)(1) and are unfair practices under CIC §790.03(h)(3).

Summary of CFPA's Response: CFPA agrees with these findings. The generation of the state of emergency letters attaching the list of coverage related laws was a manual process (manual input of claims data, and printing and importing the letter, attaching the Notice, and stuffing the envelope). Due to the high volume of claims and immediate resources for the task, there was a backlog in getting the letters processed timely. This process was recently automated, eliminating the need for manual input of claims information and stuffing envelopes as the notices are now sent via email, when possible.

20. In three instances, CFPA failed to provide written notice of any statute of limitation or other time period requirement upon which the insurer may rely to deny a claim. The Department alleges these acts are in violation of CCR §2695.7(f) and are unfair practices under CIC §790.03(h)(3).

Summary of CFPA's Response: CFPA agrees with these findings. In two instances, the statute of limitations notification was not included in the letters when it should have been. In one instance, the language regarding tolling of the statute was not correct. Time frames for any remaining benefits were provided in CFPA's follow-up letters to these insureds. CFPA will be pursuing the use of better quality IAs in the future to ensure that correspondence sent on all future claims complies with CFPA's policy and regulatory guidelines.

21. In two instances, CFPA failed to effectuate prompt, fair and equitable settlements of claims in which liability had become reasonably clear. In one instance, a check in the amount of \$1,713.32 was issued for Fair Rental Value (FRV) that was stop paid with no explanation. The insured's home rented well over the FRV limit, and this amount should have been paid under Coverage A's 10% extension.

In one instance, CFPA did not pay the insured's total loss inventory which was received on October 14, 2020, until an inquiry was sent in this examination.

The Department alleges these acts are in violation of CIC §790.03(h)(5).

Summary of CFPA's Response: In one instance, CFPA agrees with the finding, and does not know why the check was voided. The handling examiner has retired, and the IA firm no longer works for the FAIR Plan. CFPA reconsidered additional payment for FRV under the insured's Coverage A extension, and issued a check for \$1,713.32 on January 13, 2022.

In another instance, CFPA agrees with this finding. The previous IA desk examiner left her assignment with her IA firm before issuing payment for the insured's food loss. The claim was reassigned to a new desk examiner on November 4, 2020 and at that time the field adjuster's estimate was addressed and FRV was calculated. The new desk examiner also called the insured on November 4, 2020 to discuss the payments being issued and the need for the food inventory, not realizing the food loss had already been submitted by the field adjuster, but not yet paid. This was an oversight on the part of the new desk examiner, which was corrected by payment the next day. CFPA issued a payment \$408.85 on November 5, 2021.

22. In two instances, CFPA failed, upon receiving notice of claim, to provide the insured with a copy of §790.03 of the California Insurance Code within 15 calendar days. The Department alleges these acts are in violation of CIC §790.034(b)(1) and are unfair practices under CIC §790.03(h)(3).

Summary of CFPA's Response: In both instances, CFPA agrees the insured was not provided with a copy. CFPA's system is set up to automatically generate an acknowledgment letter with the Section 790.03. If there is an interruption in the workflow, the letter and enclosure is generated manually and uploaded to the file. In these cases, it was not done. CFPA will continue to monitor this process. The claims assigner was trained on what to do should the situation reoccur.