

1 William Pletcher (SBN 212664)  
2 will@consumerwatchdog.org  
3 Ryan Mellino (SBN 342497)  
4 ryan@consumerwatchdog.org  
5 **CONSUMER WATCHDOG**  
6 6330 San Vicente Blvd., Suite 250  
7 Los Angeles, CA 90048  
8 Tel: (310) 392-0522  
9 Fax: (310) 392-8874

10 *Attorneys for Petitioner/Plaintiff*

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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **FOR THE COUNTY OF LOS ANGELES**

13 **CONSUMER WATCHDOG, a non-profit**  
14 **organization,**

15 **Petitioner/Plaintiff,**

16 **v.**

17 **RICARDO LARA, in his official capacity as the**  
18 **Insurance Commissioner of the State of**  
19 **California; CALIFORNIA DEPARTMENT OF**  
20 **INSURANCE; and DOES 1–20,**

21 **Respondents/Defendants.**

22 **CASE NO. 25STCP01367**

23 **VERIFIED PETITION FOR WRIT OF**  
24 **MANDATE AND COMPLAINT FOR**  
25 **DECLARATORY AND INJUNCTIVE**  
26 **RELIEF**

27 (Code Civ. Proc. §§ 1060, 1085; Administrative  
28 Procedure Act, Gov. Code § 11350)

Consumer Watchdog is informed and believes, and upon such information and belief alleges as follows:

### **INTRODUCTION**

1. Respondent Ricardo Lara, in his capacity as Insurance Commissioner, has violated both the California Administrative Procedure Act (“APA”) (Gov. Code, § 11340 et seq.) and the statutes governing the California FAIR Plan (Ins. Code, § 10090 et seq.). He has done so by issuing two Bulletins, Bulletin 2024-8 and Bulletin 2025-4 (“the Bulletins,” attached hereto as Exhibit A and Exhibit B, respectively), authorizing insurers to shift the cost of FAIR Plan assessments onto their policyholders. This marks a fundamental change to the FAIR Plan as structured by statute. Yet Respondent<sup>1</sup> adopted it without following the procedures required by law, and without securing legislative approval for a policy the insurance industry has repeatedly failed to enact through the proper channels. If this change is allowed to stand, it will force California policyholders to pay hundreds of millions—and potentially billions—of dollars in unlawful surcharges, all without the safeguard of review of these proposed changes to regulatory changes. Through this petition and complaint, Petitioners seek to enforce the APA and the FAIR Plan statutes—and to protect California consumers from these unlawful actions.

2. This petition and complaint seeks a writ of mandate and injunction commanding the Respondent not to enforce the Bulletins and a declaration the Bulletins are unlawful and constitute underground regulations.

3. The California FAIR Plan (“FAIR Plan”) is a private association of insurers, not a state-run entity. Its day-to-day operations are controlled by the insurance industry—not by the public. Established in 1968, the FAIR Plan was designed to ensure access to basic property insurance for Californians unable to obtain coverage through the voluntary, or “admitted,” market. As of March 2025, over 574,000 homes and businesses were covered by a FAIR Plan policy—a number that continues to rise.

4. The FAIR Plan operates as California’s “insurer of last resort.” Participation in the FAIR Plan is mandatory for all property/casualty insurers doing business in the state, who are required to share

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<sup>1</sup> All subsequent references to Respondent are to Ricardo Lara in his official capacity as Insurance Commissioner.

1 proportionally in the FAIR Plan’s “expenses, profits, and losses” based on a two-year market share  
2 lookback period. When necessary due to financial conditions, the FAIR Plan may levy “assessments”  
3 against member insurers—subject to Respondent’s approval—to fund its operations and pay claims. No  
4 provisions of the FAIR Plan statutes contemplate that assessment costs can be surcharged by member  
5 insurers to their policyholders.

6         5.       In violation of the Insurance Code, Respondent has claimed the power to shift the  
7 potentially unlimited financial burdens of FAIR Plan assessments from insurers to their policyholders  
8 through administrative fiat—what Respondent misleadingly characterizes as “democratizing [the]  
9 rates.”<sup>2</sup> But it is not “democratizing the rates” to make policyholders pay for insurers’ participation in  
10 the FAIR Plan while ignoring that policyholders did not participate in the decades of profits that insurers  
11 enjoyed from the FAIR Plan (and have no right to any future profits). For insurers, that is “heads, you  
12 win; tails, policyholders lose.” The Bulletins effectively require every California policyholder to re-  
13 insure their own insurer.

14         6.       The Bulletins purport to establish rules generally applicable to the FAIR Plan’s member  
15 insurers. Substantively, the Bulletins decreed, for the first time in the FAIR Plan’s nearly 60-year history,  
16 that member insurers could pass assessment costs directly onto their policyholders (“pass-through”).<sup>3</sup>  
17 And the Bulletins established the procedures by which insurers could seek to pass-through costs.

18         7.       **APA Claim:** The Bulletins, both procedurally and substantively, clearly meet the APA’s  
19 definition of a “regulation.” (Gov. Code § 11342.600.) But they were issued without compliance with  
20 any of the APA’s rulemaking requirements, which provide opportunity for public comment and require  
21 review by the Office of Administrative Law. This noncompliance renders the Bulletins void as  
22 underground regulations.

23         8.       **FAIR Plan Claim:** The Bulletins are legally invalid as not within the scope of authority  
24 conferred on Respondent by the FAIR Plan statutes. The statutes contain no authorization for pass-  
25 throughs, nor do they empower Respondent to directly regulate the FAIR Plan’s member insurers in this

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27 <sup>2</sup> Pat Maio, “California insurance chief says he’s near ‘solution’ on State Farm rate hike,” Orange County  
28 Register, Mar. 10, 2025, available at <https://www.ocregister.com/2025/03/10/california-insurance-chief-says-hes-near-solution-on-state-farm-rate-hike/>.

<sup>3</sup> The terms “pass-through” and “surcharge” are used interchangeably throughout this petition.

manner. Additionally, the FAIR Plan statutes require member insurers to proportionally share in the plan's profits and losses. The Bulletins violate that requirement by allowing insurers to shift some FAIR Plan losses onto their policyholders (despite insurers being entitled to retain any profits).

9. In January 2025, the Palisades and Eaton Canyon wildfires tore through large swaths of Los Angeles County, burning over 37,000 acres and 16,000 structures, and resulting in at least 30 fatalities. Thereafter, on February 11, 2025, the FAIR Plan requested a special \$1 billion assessment, which Respondent approved that same day.<sup>4</sup> Multiple insurers have already filed applications for pass-throughs, and the first application could be approved as soon as April 15, 2025.

10. In light of the persistent risk of devastating wildfires, as evidenced by the Palisades and Eaton Canyon wildfires, swift resolution of this matter is essential. While policyholders are on the hook for, at most, \$500 million total in FAIR Plan losses pursuant to the February 11 assessment, the Bulletins do not cap the maximum amount of a pass-through. Subsequent fires could lead to larger assessments resulting in policyholders being surcharged hundreds or even thousands of dollars by their insurers, while many of those policyholders may be contemporaneously facing the enormous challenge of rebuilding their homes. While insurers have powerful tools at their disposal to absorb catastrophic losses (as does the FAIR Plan), including access to reinsurance markets, ordinary Californians do not.

### **PARTIES**

11. Consumer Watchdog is a nonprofit, non-partisan consumer research and advocacy organization established in 1985. Its mission is to serve as an effective voice for consumers and taxpayers in an era when special interests wield outsized influence over public policy, government, and politics. The organization brings together public interest attorneys, policy experts, strategists, and grassroots activists to expose, confront, and change unjust practices in the private and public sectors. Through its Legal Project, Consumer Watchdog litigates on behalf of consumers in state and federal courts and before regulatory agencies. The Legal Project specializes in complex litigation, including class actions, to combat illegal overcharges, deceptive practices, and violations of consumer protection laws. Consumer Watchdog, as a non-profit, charitable organization, is a "person" entitled to institute proceedings for

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<sup>4</sup> Consumer Watchdog does not challenge the assessment request nor Respondent's approval thereof.

1 injunctive or declaratory relief or a writ of mandate to compel the Department of Insurance to comply  
2 with the APA and the FAIR Plan statutes.

3 12. Consumer Watchdog has a particular interest in California’s insurance regulation; it was  
4 founded by Harvey Rosenfield, the author of Proposition 103, the 1988 insurance reform initiative that  
5 enacted the “prior approval” regulatory system in place today and made the Insurance Commissioner an  
6 elected position. For several decades, Consumer Watchdog has sought to defend the rights of California  
7 policyholders against abuses wrought by either insurers or the Department itself. Consumer Watchdog  
8 has inveighed against Respondent’s plan to allow pass-throughs since it was first announced.<sup>5</sup> However,  
9 Respondent has only pressed on with his effort to allow insurers to pass FAIR Plan assessment costs to  
10 their policyholders.

11 13. Respondent and Defendant Ricardo Lara is Commissioner of the Department of Insurance  
12 and is sued herein in his official capacity. Commissioner Lara was sworn into office on January 7, 2019.  
13 Pursuant to Insurance Code section 12906, the Department of Insurance is “under control of the Insurance  
14 Commissioner.” As required by statute, and at all times relevant herein, Commissioner Lara “shall  
15 perform all duties imposed upon him or her by the provisions of this code and other laws regulating the  
16 business of insurance in this state, and shall enforce the execution of those provisions and laws.” (Ins.  
17 Code § 12921, subd. (a).)

18 14. Respondent and Defendant the California Department of Insurance is the nation’s largest  
19 consumer protection agency. With annual direct premiums of over \$400 billion, as of 2023 California  
20 was the largest insurance market in the United States and the second largest insurance market in the world  
21 after only China.<sup>6</sup> The Department of Insurance enforces the insurance laws of California and has  
22 authority over how insurers and licensees conduct business in California.

23 \_\_\_\_\_  
24 <sup>5</sup> See, e.g., Laurence Darmiento, “L.A. consumer group calls FAIR Plan insurance reforms an industry  
25 ‘bailout,’” Los Angeles Times, Aug. 1, 2024, available at <https://www.latimes.com/business/story/2024-07-30/fair-plan-reform-homeowners-insurance-ricardo-lara-consumer-watchdog>.

26 <sup>6</sup> Annual direct premiums increased by \$90 billion, or 30%, between 2018 and 2023. (Compare  
27 “Commissioner announces California insurers collect \$310 billion in premiums,” Cal. Dept. Ins., Apr. 5,  
28 2018, available at <https://www.insurance.ca.gov/0400-news/0100-press-releases/2018/release034-18.cfm>, with “2023 Premium Volume -- Worldwide (An Alternative Look),” National Association of  
Insurance Commissioners, 2024, available at <https://content.naic.org/sites/default/files/government-affairs-top-international-insurance-markets.pdf>.)

1 15. Consumer Watchdog is unaware of the true names and capacities of  
2 Respondents/Defendants DOES 1 through 20, inclusive, and they are therefore sued by such fictitious  
3 names pursuant to Code of Civil Procedure section 474. Consumer Watchdog alleges on information and  
4 belief that each such fictitiously named Respondent and Defendant is responsible or liable in some  
5 manner for the events and happenings referred to herein, and Consumer Watchdog will seek leave to  
6 amend this Petition and Complaint to allege their true names and capacities after the same have been  
7 ascertained.

#### 8 **JURISDICTION AND VENUE**

9 16. This Court has jurisdiction to issue a writ of mandate pursuant to Code of Civil Procedure  
10 section 1085, subdivision (a). Petitioner lacks “a plain, speedy, and adequate remedy, in the ordinary  
11 course of law.” (Code Civ. Proc. § 1086.) The Court has jurisdiction to grant injunctive and declaratory  
12 relief pursuant to Code of Civil Procedure sections 525, 526, and 1060, and Government Code section  
13 11350, subdivision (a).

14 17. Venue is proper in the County of Los Angeles pursuant to Code of Civil Procedure section  
15 393, subdivision (b), because the Department of Insurance has a headquarters office located at 300 South  
16 Spring Street, South Tower, in Los Angeles, zip code 90013.

#### 17 **THE CALIFORNIA FAIR PLAN**

18 18. The California FAIR Plan was created in 1968 by Assembly Bill 1577. Codified as  
19 Chapter 9, Part 1, Division 2 in the Insurance Code commencing with section 10090,<sup>7</sup> the FAIR Plan was  
20 based on a “Model Uniform Basic Property Insurance Inspection and Placement Program” created by the  
21 insurance industry (the “Model Act”) in response to a report commissioned by President Lyndon B.  
22 Johnson that “recognize[d] the primary right and responsibility of the private insurance industry to supply  
23 the demand for such [basic insurance] coverages on a fair and economically sound basis” and  
24 recommended that states implement FAIR Plans.<sup>8</sup> The Model Act was focused on expanding coverage  
25 in “blighted” urban areas where insurers were refusing to provide coverage, particularly in the wake of  
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27 <sup>7</sup> All subsequent statutory references are to the Insurance Code unless otherwise indicated.

28 <sup>8</sup> President’s National Advisory Panel on Insurance in Riot-Affected Areas, Meeting the Insurance Crisis  
of Our Cities 1, 1968, colloquially known as the “Hughes Report.”

1 the widespread civil unrest and riots of the 1960s.<sup>9</sup> The creation of the California FAIR Plan had broad  
2 support from insurance companies.<sup>10</sup>

3 19. The California FAIR Plan is designed to ensure that residents whose properties are  
4 deemed uninsurable through no fault of their own are able to purchase property insurance. It does so by  
5 “equitably apportion[ing] that insurance, and the risks and benefits it entails, among California insurers.”  
6 (*California Fair Plan Assn. v. Garnes* (2017) 11 Cal.App.5th 1276, 1283.) The FAIR Plan is  
7 “California’s insurer of last resort” (*id.* at p. 1282)—if a California resident is unable to obtain property  
8 insurance through the admitted market, they are entitled to obtain a FAIR Plan policy. “The FAIR Plan  
9 Association issues FAIR Plan property insurance policies on behalf of its members.” (*Ohio Casualty Ins.*  
10 *Co. v. Garamendi* (2006) 137 Cal.App.4th 64, 74.) Insurers writing property insurance in California are  
11 required to participate in the FAIR Plan as a condition of doing business in California. (*Ibid.*)

12 20. As enacted, the California FAIR Plan differed in several ways from the Model Act. Most  
13 notably, the California act expanded FAIR Plan eligibility to residents living in “brush fire areas,” in  
14 addition to the urban areas the Model Act focused on. (Basic Property Insurance Inspection and  
15 Placement Plan, § 2 [noting the “serious threat of the mass cancellation of fire and extended coverage  
16 insurance in urban and brush fire areas,” and that “[i]mmediate legislation is necessary to insure the  
17 availability of insurance for those areas”].) In 1970, section 10091, subdivision (c) was amended to  
18 provide the Commissioner the authority to designate additional areas where FAIR Plan coverage would  
19 be available. (Stats.1970, c. 633, p. 1251.) Today, the FAIR Plan offers coverage throughout the entire  
20 state for policyholders unable to obtain insurance through the admitted market.<sup>11</sup> As of March 2025,  
21 nearly 574,000 residents and businesses had a FAIR Plan policy.<sup>12</sup>

23 <sup>9</sup> See, e.g., Model Act, Section III(5) (defining “urban area” as “any community having a blighted,  
24 deteriorated or deteriorating area...”).

25 <sup>10</sup> See “Homeowners in Area to Receive Aid With Insurance Protection,” *The Independent*, Aug. 15,  
1968.

26 <sup>11</sup> “Operational Assessment Report, California FAIR Plan,” Rudmose & Noller Advisors, LLC as Special  
27 Examiner for the Department of Insurance, June 15, 2022, pp. 3–4, available at  
[https://www.insurance.ca.gov/0250-insurers/0300-insurers/0400-reports-examination/upload/CFPA-](https://www.insurance.ca.gov/0250-insurers/0300-insurers/0400-reports-examination/upload/CFPA-Operational-Assessment-Report.pdf)  
Operational-Assessment-Report.pdf (“CFPA Operational Assessment Report”).)

28 <sup>12</sup> “Key Statistics and Data, Cal. FAIR Plan, March 2025, as accessed Apr. 14, 2025, available at  
<https://www.cfnet.com/key-statistics-data/>.

21. Section 10090 sets forth the purposes of the FAIR Plan:

(a) To assure stability in the property insurance market for property located in the State of California.

(b) To assure the availability of basic property insurance as defined by this chapter.

(c) To encourage maximum use, in obtaining basic property insurance, of the normal insurance market provided by admitted insurers and licensed surplus line brokers.

(d) To provide for the equitable distribution among admitted insurers of the responsibility for insuring qualified property for which basic property insurance cannot be obtained through the normal insurance market by the establishment of a FAIR Plan (fair access to insurance requirements), an industry placement facility and a joint reinsurance association.

22. Although a creature of statute, the FAIR Plan is not a public entity; rather, it is a “private association whose day-to-day operations are controlled by insurance companies, not taxpayers.”<sup>13</sup> The daily operations of the FAIR Plan are controlled by a “governing committee” whose only voting members are representatives of nine insurance companies.<sup>14</sup> (§§ 10094, subd. (c), 10095, subd. (d).) The governing document of the FAIR Plan is the “plan of operations,” which is subject to the approval of the Commissioner. (§ 10095, subd. (f).) The Commissioner has broad authority over the plan of operations, including discretion to revoke an approved plan if “necessary to carry out the purposes of the chapter,” and he can ultimately unilaterally impose a plan of operations on the FAIR Plan. (*Ibid.*) The Commissioner is further charged with “supervising” the FAIR Plan. (§ 10095, subd. (g).) Decisions of the FAIR Plan itself may be appealed to the governing committee, and then again to the Commissioner, who is thereafter authorized to “make any order to implement the purposes of the chapter and the plan.” (§ 10096, subd. (1).)

23. Fundamental to the FAIR Plan’s financial structure is its requirement that “an insurer **shall** participate in the writings, expenses, profits, and losses of the association in the proportion that its premiums written during the second preceding calendar year bear to the aggregate premiums written by all insurers in the program.” (§ 10095, subd. (c), emphasis added.) In other words—“All insurers

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<sup>13</sup> “California FAIR Plan,” Cal. Dept. Ins., accessed Apr. 11, 2025, available at <https://www.insurance.ca.gov/01-consumers/200-wrr/California-FAIR-Plan.cfm>.

<sup>14</sup> In 2021, insurers with representatives on the governing committee included Liberty Mutual, AAA, Farmers, and Allstate. (CFPA Operational Assessment Report, p. 9.) Four additional nonvoting members are appointed to the committee by the Governor—“one representative of insurance agents, one representative of insurance brokers, one representative of surplus line brokers, and one representative of the public.” (§ 10094, subd. (c).)



1 participate in the FAIR Plan’s profits and losses according to the amount of business they write in the  
2 state two years earlier.” (*Ohio Casualty, supra*, 137 Cal.App.4th at p. 74.)

3 24. The FAIR Plan is statutorily authorized to, with the Commissioner’s approval, assess “all  
4 member[ insurer]s in amounts sufficient to operate the facility.” (§ 10094, subd. (c).) This is the sole  
5 provision of the FAIR Plan statutes that mentions assessments. There are no provisions of any FAIR Plan  
6 statutes concerning or permitting insurers to seek to pass-through the cost of any such assessments to  
7 their policyholders. In nearly every year since the FAIR Plan was created, member insurers obtained a  
8 profit from the FAIR Plan.<sup>15</sup>

9 25. The FAIR Plan has assessed insurers on only two previous occasions—in 1993 and  
10 1994.<sup>16</sup> On neither occasion did the Department permit, nor even contemplate, insurers to pass-through  
11 the assessment costs to their policyholders. Prior to 2024, neither the Department, previous  
12 Commissioners, nor the FAIR Plan had ever taken the position that the FAIR Plan statutes authorized  
13 pass-throughs. The 2022 CFPA Operational Assessment Report, which evaluated the FAIR Plan’s  
14 finances, did not discuss or even raise the possibility of member insurers passing through the costs of  
15 assessments. Rather, the report found the “FAIR Plan believes that its reinsurance needs are much  
16 different than a traditional market insurer, since **it can assess its insurance company members to fund**  
17 **liquidity needs and cover losses resulting from insufficient premiums or catastrophes.**”<sup>17</sup> (Emphasis  
18 added.)

19 **BULLETINS 2024-8 AND 2025-4 PURPORT TO ALLOW INSURERS TO PASS THE COSTS**  
20 **OF FAIR PLAN ASSESSMENTS DIRECTLY TO THEIR POLICYHOLDERS**

21 26. Following destructive wildfires in 2017 and 2018, industry groups began lobbying for  
22 changes to the FAIR Plan reducing insurers’ financial exposure. In late summer 2023, the Department  
23 and insurance industry representatives unsuccessfully sought to ram a number of changes to the Insurance  
24 Code through the Legislature, including the authorization of pass-throughs. In February 2024, a new bill  
25 was introduced in the California Legislature that would have authorized FAIR Plan members to impose

26 <sup>15</sup> As of 2022, the FAIR Plan had distributed approximately \$438.8 million to member insurers since  
27 1995. (CFPA Operational Assessment Report, p. 17.) About \$106 million in profits were distributed to  
28 member insurers before 1991. (*Ohio Casualty, supra*, 137 Cal.App.4th at p. 78 fn. 14.)

<sup>16</sup> CFPA Operational Assessment Report, p. 17.

<sup>17</sup> CFPA Operational Assessment Report, p. 26.

1 surcharges on their policyholders to recover the costs of FAIR Plan assessments, including those used to  
2 cover the cost of bonds.<sup>18</sup> However, the premium surcharge provision was removed from the bill, and the  
3 proposed legislation ultimately failed to become law.<sup>19</sup>

4 27. After the Legislature failed to authorize insurers to pass Fair Plan assessment costs  
5 through to their policyholders, insurers turned to Respondent Lara instead. With no public forewarning,  
6 on July 25, 2024, Respondent entered into Stipulation and Order No. 2024-1 (“July Stipulation and  
7 Order”) with the FAIR Plan. That stipulation recited Respondent’s determination to permit FAIR Plan  
8 member insurers to shift the cost of assessments onto their policyholders—reviving the industry-friendly  
9 proposals the Legislature had failed to adopt. The July Stipulation and Order marked Respondent’s first  
10 public announcement of his intent to grant insurers what they failed to achieve through the democratic  
11 process: the right to offload their statutory obligations onto consumers. However, the July Stipulation  
12 and Order did not effectuate the pass-throughs.

13 28. Then, on August 27, 2024, Respondent entered into a second agreement with the FAIR  
14 Plan—Stipulation and Order No. 2024-2 (“August Stipulation and Order”). While repeating the same  
15 rationale as the July Stipulation and Order, the August Stipulation and Order went further by attaching a  
16 newly adopted plan of operations (the “8/27/24 Plan of Operations”). Although the new plan included  
17 multiple revisions from the version it replaced, it—like all prior iterations—conspicuously lacked any  
18 provisions addressing pass-throughs of FAIR Plan assessments by member insurers. And like the July  
19 Stipulation and Order, the August Stipulation and Order also did not effectuate the pass-throughs.

20 29. To implement the insurer pass-throughs described in the July and August Stipulations and  
21 Orders, Respondent issued Bulletin 2024-8 on September 3, 2024, one week after issuing the 8/27/24  
22 Plan of Operations. Bulletin 2024-8 sets forth three pass-through scenarios under which insurers may  
23 seek to impose surcharges on their policyholders to recover the cost of FAIR Plan assessments in what  
24 Respondent incorrectly described as the “highly unlikely event of assessment by the FAIR Plan.”  
25 (Bulletin 2024-8, p. 1.)  
26

27 <sup>18</sup> California Assembly Bill 2996, as introduced Feb. 16, 2024, available at  
28 <https://legiscan.com/CA/text/AB2996/id/2932306>.

<sup>19</sup> See generally California Assembly Bill 2996, available at <https://legiscan.com/CA/bill/AB2996/2023>.

- i. *First*, if the FAIR Plan levies assessments of up to \$1 billion on insurers writing residential policies (coverage limits up to \$3 million per location) or commercial policies (coverage limits up to \$20 million per location), or a combined total of up to \$2 billion on insurers writing both residential and commercial policies (coverage limits up to \$20 million per location), such member insurers may seek Respondent’s approval to recoup up to 50% of assessment costs through temporary supplemental fees.
- ii. *Second*, if assessments exceed \$1 billion for insurers of residential or commercial property policies or exceed \$2 billion for insurers writing both policy types combined (limits as described above), such member insurers may seek Respondent’s approval to recoup 100% of assessment costs from their own policyholders via temporary supplemental fees.<sup>20</sup>
- iii. *Third*, if the FAIR Plan levies any amount of assessment on insurers writing High Value Commercial Property Policies (coverage limits of \$20 million per structure and \$100 million per location), such member insurers may seek Respondent’s approval to recoup 100% of assessment costs from their policyholders.<sup>21</sup>

Bulletin 2024-8 provided no detail on how Respondent would evaluate pass-through requests nor any criteria to be applied governing whether to permit a pass-through.

30. Following the Palisades and Eaton Canyon wildfires in January 2025, on February 11 Respondent issued Bulletin 2025-4 in connection with the approval of the FAIR Plan’s requested \$1 billion assessment. The Bulletin states it “provides updated guidance about the procedure through which the FAIR Plan’s member insurers may request [the Commissioner’s] prior approval under Prop. 103 to seek recoupment from their policyholders of assessment amounts paid to the FAIR Plan.” Bulletin 2025-4 supplements and expands on Bulletin 2024-8 by laying out more detailed procedural

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<sup>20</sup> The Bulletin is unclear whether the first \$1 or \$2 billion in assessment costs are always split 50/50, or if policyholders are on the hook for 100% of all assessment costs when the assessment exceeds \$1 or \$2 billion.

<sup>21</sup> Although the Bulletin states that, in the context of High Value Commercial Property Policies, insurers can seek to pass-through assessment costs “as specified in the Plan,” the 8/27/24 Plan of Operations does not in fact contain any provisions governing high value commercial property policy pass-throughs by member insurers. As defined in the 8/27/24 Plan of Operations, High Value Commercial Property Policies are policies “written as a Commercial Property Policy under Division I”—that is, policies written by the FAIR Plan itself. This writ is not addressing policies written by the FAIR Plan.

1 requirements for insurance companies submitting pass-through requests, as well as specifying  
2 information insurers must provide with such a request. Respondents also released an FAQ entitled  
3 “Recoupment of FAIR Plan Assessment by Admitted Insurers” providing even more procedural and  
4 substantive direction to insurers “in conjunction with...Bulletin 2025-4.”<sup>22</sup>

5 31. Neither Bulletin was the subject of any public discussion, comment, or review. Neither  
6 Bulletin was submitted to the Office of Administrative Law for review and approval. No exemption from  
7 compliance with the Administrative Procedure Act was asserted. The hundreds of thousands of  
8 policyholders now subject to surcharges had no input into the process.

9 32. The Bulletins do not directly regulate or impact the FAIR Plan itself. The Bulletins do not  
10 modify anything about how or when the FAIR Plan assesses member insurers, or the amount that may  
11 be assessed. Rather, the Bulletins’ provisions come into play only after the FAIR Plan has issued an  
12 assessment, and solely regulate the relationship between the member insurers and their policyholders.

13 33. Respondents have sought to characterize the Bulletins as “[p]rotecting consumers from  
14 bearing the full cost of an assessment,”<sup>23</sup> claiming that “[u]nder current rules, insurance companies could  
15 ask for approval to pass all the costs on to consumers.”<sup>24</sup> These were false and misleading statements—  
16 there were no “current rules” envisioning or permitting insurers to “pass all the costs [of assessments] on  
17 to consumers,” and Respondent did not identify any such rules. Prior to these recent bulletins and orders,  
18 in the over 55 years since the FAIR Plan was created, the Department has *never* authorized insurers to  
19 pass-through assessment costs, *nor ever* indicated that such pass-throughs would be permitted. And  
20 insurers recognized that the FAIR Plan did not contemplate pass-throughs, with State Farm writing to  
21 Respondent Lara on March 20, 2024 asking him to “address[] the **uncapped financial exposure** of FAIR  
22

23 <sup>22</sup> “FAQ: Recoupment of FAIR Plan Assessment by Admitted Insurers,” Cal. Dept. Ins., as revised  
24 Feb. 27, 2025, available at <https://www.insurance.ca.gov/0250-insurers/0800-rate-filings/0200-prior-approval-factors/upload/FAQ-Recoupment-of-FAIR-Plan-Assessment-by-Admitted-Insurers-FINAL-2-27-2025.pdf>.

25 <sup>23</sup> “Commissioner Lara takes action to ensure FAIR Plan can continue paying consumer claims after the  
26 Southern California wildfires,” Cal. Dept. Ins., Feb. 11, 2025, available at  
27 <https://www.insurance.ca.gov/0400-news/0100-press-releases/2025/release015-2025.cfm>.

28 <sup>24</sup> “Commissioner Lara continues bold insurance reform agenda with landmark FAIR Plan  
modernization,” Cal. Dept. Ins., July 26, 2024, available at <https://www.insurance.ca.gov/0400-news/0100-press-releases/2024/release031-2024.cfm>.

1 Plan assessments”<sup>25</sup> (emphasis added). The press release misrepresents Respondent as protecting  
2 consumers from a financial exposure that did not exist in an apparent effort to invert the perception of  
3 the intended beneficiaries of the pass-through provisions from insurers to policyholders.

4 **THE BULLETINS ARE REGULATIONS THAT MUST BE PROMULGATED IN**  
5 **ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURE ACT**

6 34. Respondent generally claims to issue bulletins to clarify existing insurance laws and  
7 regulations.<sup>26</sup> However, the FAIR Plan statutes do not authorize insurers to pass-through assessment  
8 costs to policyholders, nor had previous Commissioners nor the Department ever previously indicated  
9 such pass-throughs were somehow permissible. Instead, Respondent is using the Bulletins here not  
10 merely to clarify existing law, but rather to introduce major new rules and procedures, and to significantly  
11 rewrite the financial underpinnings of the FAIR Plan statutes without complying with the required APA  
12 rulemaking procedures.

13 35. Under the APA, a “regulation” includes “every rule, regulation, order, or standard of  
14 general application or the amendment, supplement, or revision of any rule, regulation, order, or standard  
15 adopted by any state agency to implement, interpret, or make specific the law enforced or administered  
16 by it, or to govern its procedure.” (Gov. Code § 11342.600.) Section 11340.5 explicitly states: “[n]o state  
17 agency shall issue, utilize, enforce, or attempt to enforce any ... **bulletin** ... which is a regulation as  
18 defined in Section 11342.600, unless the ... **bulletin** ... has been adopted as a regulation and filed with  
19 the Secretary of State pursuant to this chapter.” (Gov. Code § 11340.5, subd (a), emphases added.)

20 36. The Bulletins clearly qualify as “regulations” under the APA. Bulletin 2024-8 is titled  
21 “Insurer **Recoupment Procedures** in the Highly Unlikely Event of Assessment by the FAIR Plan,” while  
22 Bulletin 2025-4 is titled “Updated Guidance regarding Insurer **Recoupment Procedures** in Response to  
23 Assessment by the FAIR Plan.” (Emphases added.) Both Bulletins set procedural rules governing how  
24 insurers may pass FAIR Plan assessment costs onto their policyholders. Furthermore, the Bulletins

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25 <sup>25</sup> State Farm General Letter to Commissioner Lara, “Re: Restoring the financial condition of State Farm  
26 General Insurance Company,” Mar. 20, 2024, available at [https://newsroom.statefarm.com/  
download/fafc215e-66d4-4e6d-8db3-03c86274b252/sfgtocdi3.20.24.pdf](https://newsroom.statefarm.com/download/fafc215e-66d4-4e6d-8db3-03c86274b252/sfgtocdi3.20.24.pdf).

27 <sup>26</sup> See, e.g., “Commissioner Lara orders insurers to fully investigate consumers’ smoke damage claims  
28 following Southern California fires,” Cal. Dept. Ins., Mar. 7, 2025, available at  
<https://www.insurance.ca.gov/0400-news/0100-press-releases/2025/release023-2025.cfm> [bulletins are  
“official legal announcements clarifying regulations”].)

purport to clarify and implement the FAIR Plan statutes. As detailed below, neither the FAIR Plan statutes nor the Plan of Operations authorize or even contemplate pass-throughs. Thus, the Bulletins themselves purport to establish the framework allowing insurers to shift costs to consumers. Respondent improperly issued these substantive and procedural rules as bulletins rather than following the required APA process.

37. The Bulletins were clearly not issued in compliance with the APA, which requires, among other things, (1) notice of proposed regulatory action (Gov. Code § 11346.2); (2) opportunity for public comment (Gov. Code § 11346.5); (3) publication of documents justifying and explaining the regulations, including informative digests and initial and final statements of reasons (Gov. Code §§ 11346.2, 11346.5, 11346.9); and (4) review and approval of proposed regulations by the Office of Administrative Law (Gov. Code § 11349.1). The Bulletins here were issued without any public notice or participation, lacked the degree of explanation and justification required by the APA, and were not submitted for review and approval by the Office of Administrative Law.

38. The Bulletins, directed at all FAIR Plan member insurers in California (and secondarily to their policyholders), do not qualify for any exemption from APA requirements, and none were asserted. Because the Bulletins are regulations that were issued without compliance with the APA, they are invalid and without legal effect. (*Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 561.)

#### **THE BULLETINS ARE NOT AUTHORIZED BY THE FAIR PLAN STATUTES**

##### **A. The FAIR Plan Statutes Do Not Authorize Respondent Lara to Allow FAIR Plan Member Insurers to Pass-Through Assessment Costs to Consumers.**

39. A regulation is invalid when it “alters or amends the governing statute or case law, or enlarges or impairs its scope.” (*Engine Manufacturers Assn. v. State Air Resources Bd.* (2014) 231 Cal.App.4th 1022, 1034.) Regulations issued without statutory authorization or that exceed the granted authority are “void.” (*Ibid.*)

40. Here, the FAIR Plan statutes contain no express authority for Respondent to generally promulgate regulations. The statutes authorize Respondent to promulgate implementing regulations only in one specific context: Insurance Code section 10094.2, subdivision (a), requiring the adoption of certain

1 limited regulations related to incentives for insurers to offer insurance in certain high risk areas (and  
2 proportionally relieving that insurer's obligations to the FAIR Plan) (see 10 CCR §§ 2590, 2590.1).<sup>27</sup>  
3 These narrowly-tailored regulations are the sole regulations authorized to be issued by the FAIR Plan  
4 statutes, and are in fact the only regulations promulgated pursuant to the FAIR Plan statutes in nearly 60  
5 years.

6 41. The statutory framework of the FAIR Plan confines Respondent's authority to oversight  
7 and approval of the FAIR Plan's Plan of Operations, as well as general supervision of the FAIR Plan  
8 itself. The pass-through provisions of the Bulletins are distinct from—and unrelated to—the internal  
9 operations or governance of the FAIR Plan. Nothing in the statutory language authorizes Respondent to  
10 extend his regulatory authority beyond supervision of the FAIR Plan itself to independently manage  
11 insurer-policyholder relationships.

12 42. Nor is there any statutory implication that Respondent's authority under the FAIR Plan  
13 statutes extends to regulating member insurers independently of the Plan of Operations or orders directly  
14 to the FAIR Plan itself. "[A]ny *implied* administrative powers must be essential to the declared objects  
15 and purposes of the enabling act—not simply convenient, but indispensable. Any reasonable doubt  
16 concerning the existence of the power is to be resolved against the agency." (*California Chamber of*  
17 *Commerce v. State Air Resources Bd.* (2017) 10 Cal.App.5th 604, 620, quotations omitted.) For more  
18 than half a century since its establishment, the FAIR Plan has successfully operated without any such  
19 implied authority over member insurers being exercised by any Commissioner. This historical practice  
20 underscores that additional regulatory powers over member insurers are neither "essential" nor  
21 "indispensable" to achieve the objectives of the FAIR Plan statutes. Respondent is fully empowered to  
22 ensure the FAIR Plan continues to meet its obligations under the authority expressly granted by statute,  
23 including his authority over the Plan of Operations and his supervisory role, which permits him to direct  
24 lawful orders to the FAIR Plan. The legislative intent (and historical precedent established by the  
25 Department and all prior Commissioners) is clear: Respondent's authority is limited to the boundaries of  
26 the approval of the Plan of Operations and orders directed to the FAIR Plan itself.

27 \_\_\_\_\_  
28 <sup>27</sup> Section 10094.2 was not part of the FAIR Plan statutes as originally enacted, but was added the  
following year. (Stats.1969, c. 649, p. 1303.)

1 **B. The Bulletins Unlawfully Amend and Enlarge the Scope of the FAIR Plan Statutes.**

2 43. The Bulletins are substantively invalid because they unlawfully amend and enlarge the  
3 scope of the FAIR Plan statutes. (See *Engine Manufacturers, supra*, 231 Cal.App.4th at p. 1034.) Nothing  
4 in the FAIR Plan statutes contemplates that insurers can be permitted to pass-through assessment costs  
5 to their policyholders. Nor is there any evidence that the Legislature intended for Respondent to be  
6 permitted to authorize insurer pass-throughs of assessment costs. While regulators are generally allowed  
7 to “fill up the details” of a statutory scheme (*Marshall v. McMahon* (1993) 17 Cal.App.4th 1841, 1848),  
8 the Bulletins do far more than merely ‘fill in details’—they fundamentally alter statutory obligations by  
9 shifting the financial exposure for potentially billions of dollars of FAIR Plan losses from insurers  
10 directly onto their policyholders. Such authority is neither expressly granted nor implicitly supported by  
11 the FAIR Plan statutes. Had the Legislature intended to grant Respondent the ability to shift assessments  
12 costs between insurers and policyholders at his own discretion, it would reasonably be expected to have  
13 expressly indicated such an ability.

14 44. The Bulletins reference three purportedly analogous insurance safety-net mechanisms—  
15 the California Insurance Guarantee Association (“CIGA”)<sup>28</sup>, the California Life and Health Insurance  
16 Guarantee Association (“CLHIGA”), and the California Earthquake Authority (“CEA”)—as justification  
17 for allowing assessment cost pass-throughs.<sup>29</sup> However, unlike the FAIR Plan statutes, the statutory  
18 schemes governing the associations and authority, in addition to providing for assessments (Ins. Code  
19 §§ 1063.145 (CIGA); 1067.08, subd. (a) (CLHIGA); 10089.23, subd. (a)(1) (CEA)), contain provisions  
20 expressly authorizing policyholder “surcharges” (Ins. Code §§ 1063.14, subd. (a)(1) (CIGA); 1067.08,  
21 subd. (i)(1) (CLHIGA); 10089.29, subd. (b)(1) (CEA)).<sup>30</sup> No comparable authorization exists in the FAIR  
22 Plan statutes. The absence of comparable provisions in the FAIR Plan statutes clearly demonstrates a  
23 deliberate legislative decision not to permit similar pass-through mechanisms despite ample opportunity  
24

25 <sup>28</sup> A.B. 2996, the 2024 bill that would have permitted pass-throughs, appears to have been modeled on  
26 CIGA’s pass-through provisions.

27 <sup>29</sup> CIGA and CLHIGA are broadly analogous to the FAIR Plan—each is an involuntary association of  
28 insurers. The CEA, in contrast, is a distinct public entity, not an association of insurers.

<sup>30</sup> Furthermore, like the FAIR Plan, no implementing regulations have ever been promulgated for either  
CIGA or CLHIGA. Implementing regulations have been promulgated for CEA, as required by statute.  
(§ 10089.11.)



1 to do so.<sup>31</sup> The Legislature’s explicit authorization of pass-throughs in these related statutory frameworks  
2 indicates that had it intended to allow pass-throughs within the FAIR Plan context, it would have  
3 explicitly provided for such authorization.

4 **C. The Bulletins Are Inconsistent with the Statutory Requirement that Member Insurers**  
5 **Proportionally Participate in the FAIR Plan’s Profits and Losses.**

6 45. The pass-throughs authorized by the Bulletins violate section 10095, subdivision (c),  
7 which explicitly mandates that “[u]nder the plan, an insurer shall participate in the writings, expenses,  
8 profits, and losses of the association in the proportion that its premiums written during the second  
9 preceding calendar year bear to the aggregate premiums written by all insurers in the program.”<sup>32</sup> As  
10 emphasized by the Court of Appeal in *Ohio Casualty, supra*, 137 Cal.App.4th at p. 82: “the imposition  
11 of the statutory obligation to participate in the FAIR Plan’s writings, expenses, profits and losses until an  
12 insurer has no direct written premiums in the second preceding year is not only rational and fair, but  
13 virtually required by the language of the FAIR Plan Act.”<sup>33</sup>

14 46. By allowing insurers to pass FAIR Plan assessment costs onto their policyholders, the  
15 Bulletins impermissibly deviate from the proportional sharing requirement—the statutory “symmetry”  
16 that balances obligations and benefits for FAIR Plan member insurers. (*Id.* at p. 83.) It “destroy[s] the  
17 symmetry” of the FAIR Plan to allow member insurers to avoid some or all of their obligations of  
18 participating in the FAIR Plan while enjoying all of its benefits. (*Ibid.*) This directly contravenes section  
19 10095, subdivision (c).

20 47. The Bulletins also create disproportionate standards among the FAIR Plan’s member  
21 insurers by setting varying caps on the amount of allowable pass-throughs—an insurer writing only  
22 homeowners insurance is limited to recovery of up to 50% of assessment costs if the total assessment is

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23 <sup>31</sup> For example, Section 10095, concerning the Plan of Operations, has been amended multiple times in  
24 just the past decade. (Stats.2016, c. 543 (S.B. 1302), § 2; Stats.2020, c. 258 (A.B. 3012), § 7; Stats.2023,  
25 c. 180 (S.B. 505), § 1.)

26 <sup>32</sup> See also section 10090, subdivision (d) (purpose of FAIR Plan is to “provide for the equitable  
27 distribution among admitted insurers of the responsibility for insuring qualified property for which basic  
28 property insurance cannot be obtained through the normal insurance market”).

<sup>33</sup> In that case, the Court of Appeal rejected insurers’ contention that, because the insurers were not  
writing new or renewal business during the two years that the FAIR Plan had issued assessments, the  
insurers should not be required to pay the assessment costs. The court found that crediting the insurers’  
contention “would destroy the symmetry of the legislative scheme by allowing the insurer to avoid its  
share of the obligations of participating in the FAIR Plan while enjoying the benefits.” (*Id.* at p. 83.)

1 less than \$1 billion, while an insurer writing high value commercial property policies can pass-through  
2 the full amount of any assessment costs even if the assessment is less than \$1 billion. These diverse  
3 standards will result in a disproportionate sharing of losses between member insurers in violation of  
4 section 10095, subdivision (c).

5 48. Moreover, the Bulletins purport to impermissibly grant Respondent discretion to  
6 determine whether, and to what extent, an insurer's assessment costs can be passed-through to  
7 policyholders. By statute, with one limited exception,<sup>34</sup> insurers must share proportionally in losses—  
8 Respondent lacks discretion to deviate from that requirement. Respondent's unilateral assumption of  
9 discretionary authority violates section 10095, subdivision (c) and exceeds the scope of his designated  
10 authority.

11 49. In addition to directly conflicting with section 10095, subdivision (c), allowing insurers  
12 to pass-through FAIR Plan assessment costs without any concomitant requirement to pass-through FAIR  
13 Plan profits is fundamentally inequitable. As described above, the FAIR Plan statutes as enacted are a  
14 modified version of the Model Act created by the insurance industry. Allowing insurers to retain all the  
15 profits of the FAIR Plan while also being permitted to pass-through some or all of its losses constitutes  
16 an inequitable “heads I win, tails you lose” outcome for insurers relative to their policyholders that was  
17 never intended by the Legislature and is not fairly implied from the FAIR Plan statutes. Given that the  
18 FAIR Plan statutes were based on the Model Act, it would be particularly unfair to now read in  
19 authorization for pass-throughs when the insurance industry itself did not include such a provision.

20 50. Additionally, it would be fundamentally unjust to require policyholders to pay for the  
21 FAIR Plan's own financial decisions. As documented in the CFPA Operational Assessment Report, the  
22 FAIR Plan purchases far less reinsurance coverage than “comparable residual market facilities,” and  
23 similarly, “the FAIR Plan's reinsurance coverage is far lower” than comparable facilities. (*Id.* at p. 26.)  
24 The reason for this is that the “FAIR Plan believes that its reinsurance needs are much different than a  
25 traditional market insurer, **since it can assess its insurance company members to fund liquidity needs**  
26 **and cover losses resulting from insufficient premiums or catastrophe.**” (*Id.* at pp. 26–27, emphasis

27  
28 <sup>34</sup> Section 10094.2 provides that “insurers who voluntarily write basic property insurance” in designated  
risk areas are “to that extent ... proportionately relieved of the liability to participate” in the FAIR Plan.

1 added.) In other words, the FAIR Plan, which is operated by insurers, intentionally purchased less  
2 reinsurance coverage than a “traditional market insurer” would have expressly because it “can assess its  
3 insurance company members.” To now require policyholders to effectively reinsure the FAIR Plan’s  
4 member insurers on these facts would be manifestly unfair.

5 51. Furthermore, the Bulletins likely incentivize harmful public policy outcomes inconsistent  
6 with both the policy decisions made by the legislative branch and Respondent’s own justification for his  
7 actions. On multiple occasions, Respondent has stated his goal to reduce the number of California  
8 residents whose only insurance option is the FAIR Plan. But the Bulletins do nothing to motivate insurers  
9 to stop non-renewals or start writing new business; instead, the Bulletins incentivize insurers to continue  
10 to transfer risks (and associated losses) to the FAIR Plan. The industry can collectively foist financial  
11 liability for properties insured by the FAIR Plan to their policyholders, while retaining all profits for  
12 years where no assessment is approved. The result of Respondent’s unilateral arrogation of legislative  
13 power will likely be further declinations of new applications and non-renewals of policyholders, forcing  
14 these consumers to seek coverage under the FAIR Plan—precisely the opposite of Respondent’s  
15 purported purposes. Because the Bulletins were never publicly vetted, these foreseeable consequences  
16 apparently escaped Respondent’s recognition.

17 **THE BULLETINS ARE NOT REASONABLY NECESSARY TO EFFECTUATE THE FAIR**  
18 **PLAN STATUTES**

19 52. A regulation is invalid unless it is “reasonably necessary to effectuate the purpose of the  
20 statute[s].” (Gov. Code § 11342.2.) Courts have construed their role as “determining whether the  
21 regulation is ‘reasonably designed to aid a statutory objective.’” (*Credit Ins. Gen. Agents Assn. v. Payne*  
22 (1976) 16 Cal.3d 651, 657.) “[R]egulations adopted under implied powers are subject to more stringent  
23 tests as to reasonableness than regulations adopted under express statutory authority.” (2 Cal. Jur. 3d  
24 Administrative Law § 238.)

25 53. The Bulletins fail this stringent test. The Bulletins claim their purpose is to ensure “the  
26 stability of the property insurance market and the availability of basic property insurance,” restating two  
27 of the four enumerated purposes of the FAIR Plan statutes. (Ins. Code § 10090.) But the Bulletins are not  
28 necessary to “assure the availability of basic property insurance”—the FAIR Plan is already statutorily

1 required to offer basic property insurance to all qualifying California residents. Nor is there any evidence  
2 the FAIR Plan will become unable to offer basic property insurance if its member insurers are not  
3 permitted to pass-through assessment costs. Additionally, the Bulletins do nothing to address the root  
4 causes leading to the FAIR Plan’s growth, or to otherwise discourage insurers from continuing to non-  
5 renew policyholders. If anything, as noted above, reducing or eliminating insurers’ financial liability for  
6 FAIR Plan assessments further incentivizes non-renewals—the exact opposite of the intended result. For  
7 that reason, the Bulletins also directly conflict with the FAIR Plan’s stated purpose of “encourag[ing]  
8 maximum use, in obtaining basic property insurance, of the normal insurance market provided by  
9 admitted insurers.” Because the Bulletins are not “reasonably necessary to effectuate the purpose[s] of  
10 the [FAIR Plan] statute[s],” and may even have the opposite of the intended results, they are invalid.

11 54. Furthermore, the Bulletins contain no evidentiary support reflecting their necessity, and  
12 given the lack of compliance with the APA, there is no public record to look to for support. The Bulletins  
13 discuss the importance of a “stable and solvent FAIR Plan,” but the pass-throughs have no direct impact  
14 on the FAIR Plan’s finances. Respondent is trying to solve a “problem” that was already addressed by  
15 the FAIR Plan statutes—when the FAIR Plan needs additional funds, it assesses member insurers, as  
16 occurred after the January 2025 wildfires.

### 17 **FIRST CAUSE OF ACTION**

18 **(Violation of the Administrative Procedure Act, Gov. Code § 11340.5**  
19 **by Consumer Watchdog against all Respondents and Defendants)**

20 **(Writ of Mandate, Code Civ. Proc., § 1085;**  
21 **Declaratory and Injunctive Relief, Gov. Code, § 11350)**

22 55. Consumer Watchdog re-alleges and incorporates by reference the allegations set forth in  
23 paragraphs 1 through 54 above.

24 56. Pursuant to Government Code section 11350, subdivision (a), “[a]ny interested person  
25 may obtain a judicial declaration as to the validity of any regulation or order of repeal by bringing an  
26 action for declaratory relief in the superior court in accordance with the Code of Civil Procedure.”

27 57. The APA defines “regulation” to mean “every rule, regulation, order, or standard of  
28 general application or the amendment, supplement, or revision of any rule, regulation, order, or standard

1 adopted by any state agency to implement, interpret, or make specific the law enforced or administered  
2 by it, or to govern its procedure.” (Gov. Code § 11342.600.) The APA provides that “[n]o state agency  
3 shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction,  
4 order, standard of general application, or other rule, which is a regulation as defined in Section 11342.600,  
5 unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or  
6 other rule has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter.”  
7 (Gov. Code § 11340.5, subd. (a).)

8 58. Bulletins 2024-8 and 2025-4 are “regulations” as defined by the APA because they  
9 “implement[], interpret[], or make[] specific the law enforced or administered by” the Department of  
10 Insurance, and “govern[ the Department’s] procedure.” Respondents did not comply with any of the  
11 requirements of the APA in promulgating the Bulletins.

12 59. Because the Bulletins meet the APA definition of “regulation,” but were not promulgated  
13 in accordance with the APA, the Bulletins are invalid and therefore void and without effect.

14 60. Respondents have a clear, present ministerial duty to comply with the provisions of the  
15 Administrative Procedure Act concerning the required procedures for promulgating regulations.  
16 Consumer Watchdog has a clear, present, and substantial right to have Respondents comply with the  
17 Administrative Procedure Act, and to refrain from permitting insurers and the FAIR Plan to pass-through  
18 the cost of losses to policyholders based on invalid underground regulations.

19 61. Consumer Watchdog has a direct and substantial beneficial interest in the issuance of a  
20 writ of mandate, apart from the public at large, in that the organization has since its inception defended  
21 the rights and pocketbooks of California policyholders from abuses wrought by both insurers and the  
22 Insurance Commissioner. Consumer Watchdog has made many public statements since Respondent  
23 announced his intention to permit pass-throughs arguing that the pass-throughs are unlawful.  
24 Respondent’s decision to unilaterally permit the transfer of hundreds of millions of dollars from  
25 policyholders to their insurers through unauthorized surcharges infringes upon the rights of millions of  
26 policyholders that Consumer Watchdog advocates for, and for whom Consumer Watchdog has a special  
27 interest in protecting. Consumer Watchdog has no plain, speedy, and adequate remedy in the ordinary  
28 course of law, in that no damages or other legal remedy could compensate it for the harm that it and all

1 Californians will suffer if Respondents are not compelled to follow APA procedures when promulgating  
2 regulations.

3 62. Additionally, Consumer Watchdog has standing in this writ action as a citizen interested  
4 in having the Administrative Procedure Act faithfully executed and in enforcing Respondent's duty to  
5 comply with the Administrative Procedure Act. (*Green v. Obledo* (1981) 29 Cal.3d 126, 144.) Whether  
6 the Bulletins purporting to permit insurers to collect hundreds of millions of dollars in surcharges from  
7 their policyholders were validly promulgated is a question of public right and the object of this action is  
8 enforcing Respondent's duty to faithfully and correctly comply with the Administrative Procedure Act.  
9 No compelling policy reasons exist to deny Consumer Watchdog standing here.

10 63. An actual controversy has arisen and now exists between Consumer Watchdog and  
11 Respondents concerning the validity of the Bulletins. As set forth more fully above, Consumer Watchdog  
12 contends that the Bulletins are procedurally invalid for failure to comply with the APA. Consumer  
13 Watchdog is informed and believes, and on that basis alleges, that Respondents contend in all respects to  
14 the contrary.

15 64. A judicial determination and declaration as to the legal obligations of Respondents is  
16 therefore necessary and appropriate in order to determine the duties of the Respondents and the rights of  
17 Californians that Consumer Watchdog advocates for.

## 18 **SECOND CAUSE OF ACTION**

19 **(Violation of the California Insurance Code, Ins. Code § 10090 et seq.**  
20 **by Consumer Watchdog against all Respondents and Defendants)**

21 **(Writ of Mandate, Code Civ. Proc., § 1085;**  
22 **Declaratory and Injunctive Relief, Code Civ. Proc., § 1060)**

23 65. Consumer Watchdog re-alleges and incorporates by reference the allegations set forth in  
24 paragraphs 1 through 64 above.

25 66. "A writ of mandate may be issued by any court to any inferior tribunal, corporation, board,  
26 or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from  
27 an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or  
28

1 office to which the party is entitled, and from which the party is unlawfully precluded by that inferior  
2 tribunal, corporation, board, or person.” (Code Civ. Proc. § 1085, subd. (a).)

3 67. Respondent Lara has a clear, present ministerial duty to comply with governing statutes  
4 in the Insurance Code. At all times relevant here, Respondent has had, and continues to have, the ability  
5 to perform his legal duties in accordance with state law but has failed to do so.

6 68. A regulation is invalid when it “alters or amends the governing statute or case law, or  
7 enlarges or impairs its scope.” (*Engine Manufacturers Assn., supra*, 231 Cal.App.4th at p. 1034.) A  
8 regulation that is not “within the scope of the authority conferred...is void.” (*Ibid.*)

9 69. The FAIR Plan statutes give Respondent authority over the Plan of Operations and general  
10 supervision of the FAIR Plan. The FAIR Plan statutes neither expressly nor impliedly grant Respondent  
11 the authority to directly regulate the FAIR Plan’s member insurers separate and apart from regulating the  
12 FAIR Plan itself.

13 70. The Bulletins do not directly affect the FAIR Plan in anyway. They purport to regulate  
14 conduct solely as between Respondent and the FAIR Plan’s member insurers. The Bulletins come into  
15 play only after the FAIR Plan decides to assess its member insurers, and are effectuated without any  
16 involvement by the FAIR Plan itself.

17 71. In seeking to directly regulate the FAIR Plan’s member insurers, the Bulletins are outside  
18 the scope of authority conferred on Respondent by the FAIR Plan statutes, and are therefore void.

19 72. Additionally, the Bulletins purport to authorize insurers to pass-through FAIR Plan  
20 assessment costs to their policyholders, which is neither authorized nor even contemplated by the FAIR  
21 Plan statutes. The Bulletins improperly amend and enlarge the scope of the FAIR Plan statutes and are  
22 therefore void.

23 73. Consumer Watchdog has a direct and substantial beneficial interest in the issuance of a  
24 writ of mandate, apart from the public at large, in that the organization has since its inception defended  
25 the rights and pocketbooks of California policyholders from abuses wrought by both insurers and the  
26 Insurance Commissioner. Consumer Watchdog has made many public statements since Respondent  
27 announced his intention to permit pass-throughs arguing that the pass-throughs are unlawful.  
28 Respondent’s decision to unilaterally permit the transfer of hundreds of millions of dollars from

1 policyholders to their insurers through unauthorized surcharges infringes upon the rights of millions of  
2 policyholders that Consumer Watchdog advocates for, and for whom Consumer Watchdog has a special  
3 interest in protecting. Consumer Watchdog has no plain, speedy, and adequate remedy in the ordinary  
4 course of law, in that no damages or other legal remedy could compensate it for the harm that it and all  
5 Californians will suffer if Respondent is not compelled to comply with the FAIR Plan statutes.

6 74. Additionally, Consumer Watchdog has standing in this writ action as a citizen interested  
7 in having the FAIR Plan statutes faithfully executed and in enforcing Respondent's duty to comply with  
8 the FAIR Plan statutes. (*Green v. Obledo* (1981) 29 Cal.3d 126, 144.) Whether the Bulletins purporting  
9 to permit insurers to collect hundreds of millions of dollars in surcharges from their policyholders exceed  
10 Respondent's statutory authority is a question of public right and the object of this action is enforcing the  
11 Respondent's duty to faithfully and correctly comply with the FAIR Plan statutes. No compelling policy  
12 reasons exist to deny Consumer Watchdog standing here.

13 75. An actual controversy has arisen and now exists between Consumer Watchdog and  
14 Respondents concerning the validity of the Bulletins. As set forth more fully above, Consumer Watchdog  
15 contends that the Bulletins are substantively invalid for improperly altering the scope of the FAIR Plan  
16 statutes and therefore exceeding Respondent's authority. Consumer Watchdog is informed and believes,  
17 and on that basis alleges, that Respondent contends in all respects to the contrary.

18 76. A judicial determination and declaration as to the legal obligations of Respondent is  
19 therefore necessary and appropriate in order to determine the duties of the Respondent and the rights of  
20 Californians that Consumer Watchdog advocates for.

### 21 **THIRD CAUSE OF ACTION**

22 **(Violation of the California Insurance Code, Ins. Code § 10090 et seq.**  
23 **by Consumer Watchdog against all Respondents and Defendants)**

24 **(Writ of Mandate, Code Civ. Proc., § 1085;**  
25 **Declaratory and Injunctive Relief, Code Civ. Proc., § 1060)**

26 77. Consumer Watchdog re-alleges and incorporates by reference the allegations set forth in  
27 paragraphs 1 through 76 above.  
28



1           78.     “A writ of mandate may be issued by any court to any inferior tribunal, corporation, board,  
2 or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from  
3 an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or  
4 office to which the party is entitled, and from which the party is unlawfully precluded by that inferior  
5 tribunal, corporation, board, or person.” (Code Civ. Proc. § 1085, subd. (a).)

6           79.     Respondent Lara has a clear, present ministerial duty to comply with governing statutes  
7 in the Insurance Code. At all times relevant here, Respondent has had, and continues to have, the ability  
8 to perform his legal duties in accordance with state law but has failed to do so.

9           80.     Insurance Code section 10095, subdivision (c) provides: “an insurer shall participate in  
10 the writings, expenses, profits, and losses of the association in the proportion that its premiums written  
11 during the second preceding calendar year bear to the aggregate premiums written by all insurers in the  
12 program, excluding that portion of the premiums written attributable to the operation of the association.”  
13 “All insurers participate in the FAIR Plan’s profits and losses according to the amount of business they  
14 write in the state two years earlier.” (*Ohio Casualty, supra*, 137 Cal.App.4th at p. 74.) The legislative  
15 intent evident from the plain language of the statute is that the FAIR Plan’s member insurers are required  
16 to proportionally share in both its profits and losses.

17           81.     The Bulletins violate the proportional sharing requirement of section 10095, subdivision  
18 (c) in several ways:

- 19           i.     By permitting insurers to pass-through the costs of FAIR Plan assessments to their  
20 policyholders, the Bulletins violate the statutory requirement that the FAIR Plan’s  
21 member insurers—not their policyholders—are responsible for covering the FAIR Plan’s  
22 losses. Additionally, permitting insurers to pass-through some or all of the costs of FAIR  
23 Plan losses to their policyholders while imposing no obligation on the insurers to similarly  
24 pass-through FAIR Plan profits is clearly contrary to the plain language and purposes of  
25 the FAIR Plan statutes.
- 26           ii.    The Bulletins also violate the proportional sharing requirement as amongst the FAIR  
27 Plan’s member insurers. The Bulletins provide that insurers writing residential property  
28 policies are permitted to pass-through only up to 50% of assessment costs if the total

assessment is less than \$1 or \$2 billion, while insurers writing high value commercial property policies can pass-through the full amount of any assessment costs. This results in the FAIR Plan's member insurers disproportionately sharing in the FAIR Plan's losses.

iii. Further, the Bulletins purport to grant Respondent discretion he is prohibited from exercising. Pursuant to the Bulletins, Respondent has unbounded discretion to decide whether to permit member insurers to pass-through assessment costs to their policyholders. The FAIR Plan statutes require that all member insurers share proportionally in losses—Respondent has no discretion to excuse some insurers from this requirement.

82. Consumer Watchdog has a direct and substantial beneficial interest in the issuance of a writ of mandate, apart from the public at large, in that the organization has since its inception defended the rights and pocketbooks of California policyholders from abuses wrought by both insurers and the Insurance Commissioner. Consumer Watchdog has made many public statements since Respondent announced his intention to permit pass-throughs arguing that the pass-throughs are unlawful. Respondent's decision to unilaterally permit the transfer of hundreds of millions of dollars from policyholders to their insurers through unauthorized surcharges infringes upon the rights of millions of policyholders that Consumer Watchdog advocates for, and for whom Consumer Watchdog has a special interest in protecting. Consumer Watchdog has no plain, speedy, and adequate remedy in the ordinary course of law, in that no damages or other legal remedy could compensate it for the harm that it and all Californians will suffer if Respondent is not compelled to comply with the FAIR Plan statutes.

83. Additionally, Consumer Watchdog has standing in this writ action as a citizen interested in having the FAIR Plan statutes faithfully executed and in enforcing Respondent's duty to comply with the FAIR Plan statutes. (*Green v. Obledo* (1981) 29 Cal.3d 126, 144.) Whether the Bulletins purporting to permit insurers to collect hundreds of millions of dollars in surcharges from their policyholders exceed Respondent's statutory authority is a question of public right and the object of this action is enforcing Respondent's duty to faithfully and correctly comply with the FAIR Plan statutes. No compelling policy reasons exist to deny Consumer Watchdog standing here.

84. An actual controversy has arisen and now exists between Consumer Watchdog and Respondent concerning the validity of the Bulletins. As set forth more fully above, Consumer Watchdog contends that the Bulletins are substantively invalid for violating the proportional sharing requirement of the FAIR Plan statutes. Consumer Watchdog is informed and believes, and on that basis alleges, that Respondent contends in all respects to the contrary.

85. A judicial determination and declaration as to the legal obligations of Respondent is therefore necessary and appropriate in order to determine the duties of the Respondent and the rights of Californians that Consumer Watchdog advocates for.

## **PRAYER FOR RELIEF**

WHEREFORE, Consumer Watchdog prays for judgment as follows:

1. That this Court issue a peremptory writ of mandate commanding Respondent not to attempt to implement or enforce the Bulletins, or to otherwise allow FAIR Plan member insurers to directly pass-through assessment costs to their policyholders;

2. That this Court declare that the Bulletins constitute invalid underground regulations;

3. That this Court declare that the Bulletins are not authorized by the FAIR Plan statutes;

4. That this Court issue injunctive relief prohibiting Respondent from allowing FAIR Plan member insurers to directly pass-through assessment costs to their policyholders;

5. That this Court issue a mandatory injunction requiring Respondent to facilitate the return of any and all unlawfully collected assessment costs with interest from member insurers back to their policyholders;

6. That this Court award Consumer Watchdog its costs of suit herein, including out-of-pocket expenses and reasonable attorneys' fees under Code of Civil Procedure section 1021.5 and any other applicable statute;

7. That this Court grant Consumer Watchdog such other, different, or further relief as the Court may deem just and proper.

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DATE: April 14, 2025

CONSUMER WATCHDOG

By: Ryan Mellino

WILLIAM PLETCHER

RYAN MELLINO

*Attorneys for Petitioner/Plaintiff*

**VERIFICATION**

I, Jamie Court, declare:

I am the President of Consumer Watchdog, Petitioner/Plaintiff in the above-entitled action. I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY RELIEF and know the contents thereof to be true of my own knowledge, except as to those matters that are alleged on information and belief, and as to those matters I believe them to be true. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 14th day of April, 2025 in Los Angeles, California.



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Jamie Court  
President, Consumer Watchdog

# **EXHIBIT A**



**RICARDO LARA**  
CALIFORNIA INSURANCE COMMISSIONER

## **BULLETIN 2024-8**

**TO: All Admitted Property & Casualty Insurers and Other Interested Parties**

**FROM: Insurance Commissioner Ricardo Lara**

**DATE: September 3, 2024**

**RE: Insurer Recoupment Procedures in the Highly Unlikely Event of Assessment by the FAIR Plan**

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*This Bulletin provides notice of the procedure through which the FAIR Plan's member insurers may request the Insurance Commissioner's prior approval under Proposition 103 to seek recoupment from their policyholders of any FAIR Plan assessments in the highly unlikely event that the FAIR Plan levies an assessment, an occurrence which has not happened since 1994.*

Since taking office in 2019, I have made improving the FAIR Plan a top priority. Over the past several years, my Department has worked on reports and audits to make the FAIR Plan more responsive to consumers. The FAIR Plan has been subject to a myriad of Department operational and financial surveillance exams, and is now making improvements such as strengthening control over its informational systems, making appropriate changes to operational processes, improving customer service and response times by hiring more staff, and implementing more reasonable and clearer eligibility guidelines for residential dwelling policies, among other efforts. In addition, in 2019, I ordered the FAIR Plan to double its coverage limit for residential properties to \$3 million to account for increased home values and building costs and, in 2023, I reached an agreement with the FAIR Plan to increase its standard commercial coverage limit to \$20 million per location.

A key element of my Sustainable Insurance Strategy<sup>1</sup> is modernizing the FAIR Plan, a necessary part of my ongoing efforts to stabilize California's insurance market while holding true to the spirit and intent of the landmark Proposition 103. Just last month, I announced<sup>2</sup> a breakthrough, unprecedented agreement with the FAIR Plan, expanding coverage through establishment of a new "high-value" commercial coverage option with limits up to \$20 million per building, creating greater financial stability through a sounder

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<sup>1</sup> <https://www.insurance.ca.gov/01-consumers/180-climate-change/SustainableInsuranceStrategy.cfm>

<sup>2</sup> <https://www.insurance.ca.gov/0400-news/0100-press-releases/2024/release031-2024.cfm>

financial formula to protect policyholders in extreme loss scenarios, and improving FAIR Plan transparency with increased public reporting on its clearinghouse programs, total exposures, and policy uptakes by the admitted market, among other financial health and solvency areas.

It's critical for Californians to understand that a growing FAIR Plan contributes to our insurance crisis. By strengthening the FAIR Plan while providing financial stability and solvency protections, we are creating long-term security for consumers, homeowners, and businesses across the state that is long overdue.

I have now issued Orders 2024-1 and 2024-2, which amend the FAIR Plan's Plan of Operation to protect the FAIR Plan's financial solvency and promote greater stability in our state's property insurance market by, *inter alia*, clarifying the manner in which the FAIR Plan may assess its member insurers.<sup>3</sup> As the risk of more climate change-intensified wildfires increase in California, a major wildfire in one geographical area concentrated with FAIR Plan-insured properties could overwhelm the FAIR Plan's reserves and its capacity to quickly and fully pay consumers' claims. In the highly unlikely event that the Plan is substantially threatened with insolvency, the FAIR Plan may levy an assessment on its member insurers<sup>4</sup> with the Insurance Commissioner's prior approval.<sup>5</sup>

This Bulletin provides notice of the procedure through which the FAIR Plan's member insurers may request the Insurance Commissioner's prior approval under Prop. 103<sup>6</sup> to seek recoupment from their policyholders of any FAIR Plan assessments in the highly unlikely event that the FAIR Plan levies an assessment, an occurrence which has not happened since 1994, despite significant wildfires that have occurred since 2017. While such an assessment has not happened in more than 30 years, the FAIR Plan's recent expansion creates a negative feedback loop. When the FAIR Plan takes on more customers, it causes traditional insurance companies to withdraw from certain areas, further increasing dependence on the FAIR Plan. This cycle can ultimately weaken the FAIR Plan's financial stability and limit consumer choice.

Any FAIR Plan member insurer that has paid an assessment levied by the FAIR Plan may submit a rule-change application requesting the Insurance Commissioner's prior approval, pursuant to Prop. 103 and in accordance with the Insurance Commissioner's rate filing instructions<sup>7</sup>, to seek recoupment from its policyholders of any such assessment as follows:

1. To assure the stability of the property insurance market and the availability of basic property insurance in the highly unlikely event that the FAIR Plan is authorized to levy assessments, in one calendar year, of up to \$1 billion on

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<sup>3</sup> Cal. Ins. Code § 10094, subds. (b) & (c); § 10095, subd. (c).

<sup>4</sup> Cal. Ins. Code § 10095, subds. (a) & (c).

<sup>5</sup> Cal. Ins. Code § 10095, subd. (c).

<sup>6</sup> See, Cal. Ins. Code, §§ 1861.02, subd. (c), 1861.05, subd. (b); see also, Cal. Ins. Code, §§ 1857.7, 1857.9, & 1864; Cal. Code Regs., tit. 10, §§ 2641.1-2643.8, 2644.1-2644.28.

<sup>7</sup> <https://www.insurance.ca.gov/0250-insurers/0800-rate-filings/0200-prior-approval-factors/>



member insurers that write residential property insurance policies with available limits of \$3 million per Location or less, or up to \$1 billion to member insurers that write commercial property insurance policies with available limits of \$20 million per Location or less, or up to a total of \$2 billion to member insurers that write residential and commercial property policies with available limits of \$20 million per Location or less, the FAIR Plan's member insurers may request the Insurance Commissioner's prior approval to collect temporary supplemental fees from their own policyholders, in the line or lines that were assessed, in order to recoup up to 50% of amounts assessed as described in this paragraph.

2. To assure the stability of the property insurance market and the availability of basic property insurance in the highly unlikely event that the FAIR Plan is authorized to levy assessments, in one calendar year, that exceed \$1 billion on member insurers that write residential property insurance policies with available limits of \$3 million per Location or less, or exceed \$1 billion to member insurers that write commercial property insurance policies with available limits of \$20 million per Location or less, or exceed \$2 billion to member insurers that write residential and commercial property policies with available limits of \$20 million per Location or less, the FAIR Plan's member insurers may request the Insurance Commissioner's prior approval to collect temporary supplemental fees from their own policyholders, in the line or lines that were assessed, in order to recoup all amounts assessed as described in this paragraph.
3. To assure the stability of the property insurance market and the availability of basic property insurance in the highly unlikely event that the FAIR Plan is authorized to levy assessments on member insurers that write commercial property insurance policies with available limits of \$20 million per structure and \$100 million per Location in the aggregate ("High Value Commercial Property Policies"), those member insurers may request the Insurance Commissioner's prior approval, as specified in the Plan, to collect temporary supplemental fees from their own High Value Commercial Property Policyholders in order to recoup the full amount of assessment.
4. All rule-change applications requesting permission to collect temporary supplemental fees to recoup any FAIR Plan assessments are subject to the Insurance Commissioner's prior review and approval under Prop. 103 and must be submitted according to the Department's instructions for rule-change applications in effect at the time the application is made<sup>8</sup>.
5. If approved, the amount of any temporary supplemental fee shall be separately stated on a notice, bill, or policy declaration sent to an insured and shall include the following description of, and purpose for, the California FAIR Plan Association:

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<sup>8</sup> See, <https://www.insurance.ca.gov/0250-insurers/0800-rate-filings/0200-prior-approval-factors/>

“Companies admitted to write property and casualty insurance in California are required to participate in the California FAIR Plan Association, which makes basic property insurance available to California consumers who would otherwise be unable to obtain such insurance through the normal insurance market. In the highly unlikely event that catastrophic losses render the FAIR Plan unable to pay operating expenses and policyholder claims because it does not have sufficient retained earnings, reinsurance, and/or proceeds from catastrophe bonds, if sold, the FAIR Plan may request the Insurance Commissioner’s approval to assess each member insurance company its fair share if necessary to pay the Plan’s operating expenses and policyholder claims.

To assure stability in the California property insurance market and to assure the continued availability of property insurance in California, the FAIR Plan’s member insurance companies may collect a temporary supplemental fee to recover a portion of these assessments. If this happens, ‘Temporary Supplemental Fee’ with an amount will be displayed on a notice, bill, or your policy declarations.”

I believe this sounder financial sustainability structure is necessary to ensure the FAIR Plan’s financial resiliency and is similar to other existing California insurance safety net mechanisms in place today where insurers may assess policyholders in the highly unlikely event of an insurer insolvency such as the California Insurance Guarantee Association, the California Life and Health Insurance Guarantee Association, and the California Earthquake Authority.

A stable and solvent FAIR Plan — established more than 50 years ago as the state’s insurer of last resort — provides important certainty for insurance consumers who otherwise cannot find insurance coverage in the traditional or surplus lines markets. Modernizing the FAIR Plan is critical to ensure a reliable, yet temporary, safety net that is there when California’s consumers need it.

Inquiries regarding this Bulletin should be directed to:

Melissa A. Wurster  
Legal Division, Rate Enforcement Bureau  
Work: (916) 492-3512  
[Melissa.Wurster@insurance.ca.gov](mailto:Melissa.Wurster@insurance.ca.gov)

## **EXHIBIT B**



**RICARDO LARA**  
CALIFORNIA INSURANCE COMMISSIONER

## **BULLETIN 2025-4**

**TO: All Admitted Property & Casualty Insurers and Other Interested Parties**

**FROM: Insurance Commissioner Ricardo Lara**

**DATE: February 11, 2025**

**RE: Updated Guidance regarding Insurer Recoupment Procedures in Response to Assessment by the FAIR Plan**

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*This Bulletin provides UPDATED guidance regarding the procedure through which the FAIR Plan's member insurers may request the Insurance Commissioner's prior approval under Proposition 103 to seek recoupment from their policyholders of any FAIR Plan assessments. Insurers were previously notified of these procedures in Bulletin 2024-8.<sup>1</sup>*

A key element of my Sustainable Insurance Strategy<sup>2</sup> is modernizing the FAIR Plan, a necessary part of my ongoing efforts to stabilize California's insurance market while holding true to the spirit and intent of the landmark ballot initiative, Proposition 103. It is critical for Californians to understand that a growing FAIR Plan contributes to our insurance crisis. By strengthening the FAIR Plan while providing financial stability and solvency protections, we are creating long-term security for consumers, homeowners, and businesses across the state that is long overdue. Last summer, I announced<sup>3</sup> a breakthrough, unprecedented agreement with the FAIR Plan, that among other financial health and solvency protections, created greater financial stability through a sounder financial formula to protect policyholders in extreme loss scenarios when covered losses exceed the FAIR Plan's available cash, reinsurance, and other funding sources, if available. In those situations, the FAIR Plan may, with my prior approval,<sup>4</sup> levy an assessment on its member insurers.<sup>5</sup>

As the risk of more climate change-intensified wildfires increases in California, a major wildfire in one geographical area concentrated with FAIR Plan-insured properties could overwhelm the FAIR Plan's reserves and its capacity to quickly and fully pay

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<sup>1</sup> [Bulletin 2024 - 8: Insurer Recoupment Procedures](#)

<sup>2</sup> <https://www.insurance.ca.gov/01-consumers/180-climate-change/SustainableInsuranceStrategy.cfm>

<sup>3</sup> <https://www.insurance.ca.gov/0400-news/0100-press-releases/2024/release031-2024.cfm>

<sup>4</sup> Cal. Ins. Code § 10095, subd. (c).

<sup>5</sup> Cal. Ins. Code § 10095, subds. (a) & (c).

consumers' claims not only in that one geographical area but potentially statewide. This is the exact situation produced by the January 2025 wildfires in Southern California. To date, the FAIR Plan has received 4,794 claims from the Palisades and Eaton fires, continuing to receive new claims daily, and has paid out \$914 million to policyholders. The FAIR Plan has estimated its total loss from the Palisades and Eaton fires at approximately \$4 billion and anticipates paying 75%, or \$2.34 billion, of the remaining \$3.125 billion reserved for unpaid losses over the next few months, and may be called upon to pay more if there are subsequent events later this year.

Further underscoring the need for this reform, the last FAIR Plan assessments followed the 1993 Kinneloa Fire in Altadena and Old Topanga Fire in Malibu and Topanga that burned some of the same areas as these 2025 fires – claiming three lives and destroying nearly 550 structures in those devastating fires.<sup>6</sup> Previous insurance commissioners approved \$260 million, or approximately \$563 million in today's dollars,<sup>7</sup> in assessments for those fires and for the fires following the 1994 Northridge Earthquake.

Given the urgent need for the FAIR Plan to obtain emergency funds as a result of the unprecedented losses caused by the January 2025 wildfires and to help Californians rebuild in the wake of this crisis, the FAIR Plan requested, and I approved, through issuance of my Order 2025-1, the FAIR Plan's request to levy a \$1 billion assessment on its member insurers -- the first assessment on its member insurers in over 30 years. This assessment provides funding crucial to the FAIR Plan's ability to continue operating and timely pay consumer claims from these devastating fires, and help ensure that the FAIR Plan can continue to pay claims if there are subsequent events this year. The FAIR Plan is now in the process of sending assessment notices to its member insurers, which will be required to remit funds within 30 days from the date of the notice, if not sooner.

This Bulletin provides updated guidance about the procedure through which the FAIR Plan's member insurers may request my prior approval under Prop. 103<sup>8</sup> to seek recoupment from their policyholders of assessment amounts paid to the FAIR Plan.

Any FAIR Plan member insurer that has paid an assessment levied by the FAIR Plan may submit a rule-change application requesting the Insurance Commissioner's prior approval, pursuant to Prop. 103, to collect temporary supplemental fees to recoup a portion of its FAIR Plan assessment as follows:

1. To assure the stability of the property insurance market and the availability of basic property insurance in the event the FAIR Plan is authorized to issue assessment(s) of up to \$1 billion for personal lines or up to \$1 billion for commercial lines in one calendar year, the FAIR Plan's member insurers may recoup 50% of the amount the insurer paid for the assessment(s), but only if the

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<sup>6</sup> See [Wildfires in Los Angeles County - Wildfire Los Angeles](#)

<sup>7</sup> See [https://www.bls.gov/data/inflation\\_calculator.htm](https://www.bls.gov/data/inflation_calculator.htm)

<sup>8</sup> See, Cal. Ins. Code, §§ 1861.02, subd. (c), 1861.05, subd. (b); see also, Cal. Ins. Code, §§ 1857.7, 1857.9, & 1864; Cal. Code Regs., tit. 10, §§ 2641.1-2643.8, 2644.1-2644.28.

insurer confirms that its assessment payment was not covered by reinsurance or reimbursed through other means.

2. To assure the stability of the property insurance market and the availability of basic property insurance in the event the FAIR Plan is authorized to issue assessment(s) exceeding \$1 billion for personal lines or exceeding \$1 billion for commercial lines in one calendar year, the FAIR Plan's member insurers may recoup 100% of any portion of the assessment above \$1 billion for the line assessed, but only if the insurer confirms that its assessment payment was not covered by reinsurance or reimbursed through other means.
3. To assure the stability of the property insurance market and the availability of basic property insurance in the event that the FAIR Plan is authorized to issue assessments for losses allocated to the FAIR Plan's commercial property policies with limits of \$20 million *per structure* and up to \$100 million per Location in the aggregate ("High Value Commercial Property Policies"), those member insurers may request the Insurance Commissioner's prior approval, as specified in the Plan of Operation of the FAIR Plan, to collect temporary supplemental fees from their own policyholders with limits above \$20 million *per structure*, but only if the insurer confirms that its assessment payment was not covered by reinsurance or reimbursed through other means.
4. All rule-change applications requesting permission to collect temporary supplemental fees to recoup any FAIR Plan assessments are subject to the Insurance Commissioner's prior review and approval under Prop. 103 and must be submitted according to the Department's instructions for rule-change applications in effect at the time the application is made<sup>9</sup>.
5. The Commissioner's Order 2025-1 approved a total assessment of \$1 billion, which means any FAIR Plan member insurer may request recoupment of 50% of the assessment paid to the FAIR Plan, if the insurer can also demonstrate that its assessment payment was not subject to reimbursement through reinsurance or other means.
6. Rule-change applications seeking approval for recoupment of the FAIR Plan assessment authorized by Order 2025-1 must be filed within six months from the date of the FAIR Plan's assessment notice to the insurer submitting the application.
7. A FAIR Plan member insurer seeking recoupment of the FAIR Plan assessment authorized by Order 2025-1 shall include the designation of "FPA-2025" in the Program name of the application being submitted, e.g., Homeowners FPA-2025.

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<sup>9</sup> See, <https://www.insurance.ca.gov/0250-insurers/0800-rate-filings/0200-prior-approval-factors/>

8. A FAIR Plan member insurer seeking recoupment of the FAIR Plan assessment authorized in Order 2025-1 must provide the following information in its rule change application:
  - a. Documentation showing the total amount of the FAIR Plan assessment levied against the member insurer for all lines of insurance, along with any breakdown showing the percentage of the insurer's assessment allocated toward the FAIR Plan's residential and/or commercial property losses, including the amount of the assessment that is allocated to the line of insurance for which the rule change application is being submitted;
  - b. Documentation or an attestation under penalty of perjury confirming that the member paid the full amount assessed by the FAIR Plan, when the assessment was paid, and that no portion of the amount to be recouped was covered by reinsurance or reimbursed from another source;
  - c. The amount of temporary supplemental fee each policyholder in that line of insurance is subject to and how that amount was determined;
  - d. The total amount of recoupment requested, which can be 50% of the total, unreimbursed assessment amount that the insurer paid to the FAIR Plan;
  - e. For the line of insurance represented by the subject rule filing, the types or categories of policyholders of the member insurer that will be subject to the temporary supplemental fee, e.g., renters, condominium, mobile homes or manufactured homes, dwelling, etc. for personal lines, or commercial fire policy, businessowners, etc. for commercial lines;
  - f. The desired effective date on which to begin collecting temporary supplemental fees on new and renewal policies;
  - g. Completion of a separate FAIR Plan Assessment Questionnaire available on the Department website; and,
  - h. A plan to recover the insurer's approved recoupment amount over a period of two years from the requested effective date or what ends up being the actual effective date once the rule-change application is approved by the Department.
9. The temporary supplemental fee charged to each policyholder should be a percentage of each policyholder's premium. In its rule change application requesting approval of a temporary supplemental fee, the insurer must provide the amount of temporary supplemental fee each policyholder in that line (product or coverage) of insurance is subject to and how that amount was determined..
10. Any rule-change application submitted to recoup assessment payments through temporary supplemental fees on policyholders shall be revenue neutral and shall not include proposals or amendments to existing rates or rules. Applications that do not comply with this rule will be rejected. An insurer that does not submit a corrected, acceptable application by the six-month deadline noted in paragraph 6, above, will forfeit its right to obtain recoupment.

11. Any amount recouped by a member insurer through temporary supplemental fees on policyholders shall not be considered premium.
12. Any amount recouped by an insurer through temporary supplemental fees on policyholders shall not be considered losses for the purpose of any subsequent rate change application.
13. The Department will collect information from insurers in the future to ensure that insurers did not collect more in temporary supplemental fees than was permitted as outlined above. The manner and process that the Department will use to collect this information will be provided at a later date.
14. If approved, the amount of any temporary supplemental fee shall be separately stated on a notice, bill, or policy declaration sent to an insured and shall include the following description of, and purpose for, the California FAIR Plan Association:

*“Companies admitted to write property and casualty insurance in California are required to participate in the California FAIR Plan Association, which makes basic property insurance available to California consumers who would otherwise be unable to obtain such insurance through the normal insurance market. In the event that catastrophic losses render the FAIR Plan unable to pay operating expenses and policyholder claims because it will not have sufficient retained earnings, reinsurance, a line of credit, if available, and/or proceeds from catastrophe bonds, if sold, the FAIR Plan may request the Insurance Commissioner’s approval to assess each member insurance company its fair share if necessary to pay the Plan’s operating expenses and policyholder claims.*

*To assure stability in the California property insurance market and to assure the continued availability of property insurance in California, the FAIR Plan’s member insurance companies may collect a temporary supplemental fee to recover a portion of these assessments. If this happens, ‘Temporary Supplemental Fee’ with an amount will be displayed on a notice, bill, or your policy declarations.”*

I believe this sounder financial sustainability structure is necessary to ensure the FAIR Plan’s long-term financial resiliency and is similar to other existing California insurance safety net mechanisms in place today where insurers may recoup from their policyholders in the highly unlikely event of an insurer insolvency such as the California Insurance Guarantee Association, the California Life and Health Insurance Guarantee Association, and the California Earthquake Authority.

A stable and solvent FAIR Plan — established more than 50 years ago as the state’s insurer of last resort — provides important certainty for insurance consumers who otherwise cannot find insurance coverage in the traditional or surplus lines markets.



Modernizing the FAIR Plan is critical to ensure a reliable, yet temporary, safety net that is there when California's consumers need it.

Insurer inquiries regarding this Bulletin may be directed to:

[REBPublicInquiries@insurance.ca.gov](mailto:REBPublicInquiries@insurance.ca.gov)