Public Comments of Consumer Watchdog on
Proposed Intervenor and Administrative Hearing Bureau
Amended Text of Regulation (issued 2/13/26)

REG-2025-00006

Submitted to the California Department of Insurance
March 2, 2026

EXPOSE. CONFRONT. CHANGE.
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OVERVIEW OF OBJECTIONS TO THE FEBRUARY 13 AMENDMENTS AND REQUESTED ACTION

Consumer Watchdog and other consumer advocacy and public interest organizations across the state remain strongly opposed to Insurance Commissioner Ricardo Lara's proposed regulatory amendments.[1] These amendments will unlawfully undermine—if not practically eliminate—the voter-mandated system of consumer participation established by Proposition 103. They do not promote or expand public oversight; they shrink it to the point of futility or impossibility.

In the aftermath of the 2025 wildfires, it is more important than ever that the public retain an active role in challenging and scrutinizing unjustified rate hike requests and unfair and discriminatory rating, underwriting, and claims handling practices. Commissioner Lara has recently adopted industry-drafted "Sustainable Insurance Strategy" regulations, which allow insurers to pass through reinsurance costs; rely on opaque, black box catastrophe models to "justify" ever higher rates; and force policyholders onto the FAIR Plan. Now, the proposed amendments to the consumer participation regulations compound that shift by erecting new barriers to intervention and compensation for individuals and organizations who advocate for the interests of consumers and make a substantial contribution in Department rulemaking, ratemaking, and noncompliance proceedings in direct conflict with voter-adopted Proposition 103.

Declaring himself and the Department to be "the voice of consumers in the rate review process," the Commissioner claims the proposed February 13 amendments "are designed to uphold one of the core purposes of Prop. 103 – meaningful public participation[.]"[2] That declaration reflects a fundamental misunderstanding of the regulator's role under Proposition 103. Voters deliberately created a system in which independent consumer advocates—separate from the Department—participate in rate proceedings to test the evidence, challenge insurers, and build the record.

The February 13 amended regulation text would do nothing to increase public participation or fix the direct conflicts with the statutory requirements of Proposition 103 and the Administrative Procedure Act ("APA") discussed at length in the November 20, 2025 comments

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[1] Comments of Consumer, Labor, Senior, Immigrant, Low Income, and Public Advocates and Concerned Civic Organizations to Cal. Insurance Commissioner re REG-2025-00006, Intervenor and Administrative Hearing Bureau Fairness and Accountability (as amended February 13, 2026) (March 2, 2026).

[2] Press Release, Cal. Dept. of Ins., *Commissioner Lara unveils intervenor reform regulations to increase transparency and protect consumers' money* (Feb. 13, 2026) (hereafter "Feb. 13 CDI Press Release"), https://www.insurance.ca.gov/0400-news/0100-press-releases/2025/release007-2026.cfm.

of Consumer Watchdog and other consumer rights organizations.[3] In many respects, the amended regulations exacerbate those conflicts.

Instead, the February 13 amendments substitute new subjective and vague standards that would permit the Commissioner to deny or reduce compensation to consumer representatives who make a substantial contribution to rate proceedings whenever he or one of his delegates concludes that their advocacy did not provide "independent analytical value" beyond the Department's views or if they take positions contrary to past decisions of the Commissioner. Deeming all services and costs expended on such advocacy "unreasonable" and non-compensable, these newly invented standards would swallow the statutory "substantial contribution" standard and its underlying purpose of promoting consumer participation in the rate setting process.

The Commissioner also claims his proposal provides "the highest standards of transparency and accountability"[4] and yet, over the objections of every consumer advocate who weighed in with written and oral comments back in November, the February 13 amendments continue to strike out the one provision of the current regulations aimed at holding insurance companies to the same transparency and accountability standards such that they will no longer be required to disclose their own legal fees and expenditures in the same proceedings.

Key problems with the February 13 amended regulation text include:

- Injecting subjective standards found nowhere in the statute that would allow the Commissioner to deny compensation and chill protected advocacy he deems "unreasonable," including by deeming opposition to the Department's views and Commissioner's past decisions as "cumulative," while at the same time deeming time spent on advocacy in agreement with the Department as "duplicative," and deeming services the Commissioner unilaterally determines are not "reasonably necessary" to "narrow" or "resolve" issues as "wasteful";
- Imposing arbitrary standards for retroactively deeming the amount of time or level of staffing for tasks performed by consumer representatives (often necessitated by the aggressive litigation tactics employed by insurers) as "excessive," while imposing no limits on the number of lawyers, lobbyists, and experts an insurance company can dedicate to defending its positions in the same proceeding at policyholders' expense;

[3] Consumer Watchdog incorporates by reference its November 20, 2025 comments on the Commissioner October 3 regulation text, which apply equally to the unchanged and amended portions of the February 13 amended regulation text.
[4] Feb. 13 CDI Press Release, *supra*, note 2.

- Eliminating the requirement that insurance companies that challenge the compensation of consumer representatives must reveal their own legal expenditures in the same proceeding;
- Erecting new hurdles for individuals and consumer groups to be found eligible to seek compensation in Department proceedings found nowhere in the statute, including a new requirement to provide a statement "describing how the intervenor or participant identifies and solicits consumer views or interests" with unspecified "evidence in support of" this statement.
- Stripping independent Administrative Law Judges ("ALJs") of their authority to resolve discovery disputes and review proposed settlements of administrative challenges over rates and control the course and scope of evidentiary hearings, while purporting to consolidate all authority within the Commissioner's executive staff in direct conflict with Insurance Code section 1861.08; and
- As drafted, could strip rights of consumers to challenge rate hikes under 7% by changing the definition of a "proceeding;" these changes appear to be aimed at denying consumer participation and commensurate procedural due process protections, independent ALJ oversight, and compensation for consumer advocacy during rate review process unless and until the Commissioner determines to notice a formal hearing (an extremely rare event even when required by statute).

Taken together, the Commissioner's proposed February 13 amendments directly conflict with Proposition 103's public participation requirements and its underlying purposes. They would silence independent consumer advocates by making it financially unsustainable for non-profit organizations and individuals to challenge insurers' excessive rate proposals and unfair practices in proceedings where insurers are represented by private law firms and lobbying organizations.

The predictable result will be higher rates and unfair practices that go unchallenged, with the greatest burden falling on the most vulnerable policyholders. Rather than opening the door to new consumer participants in Departmental proceedings, the Commissioner's proposals would close it, reversing the core reform Proposition 103 enacted to ensure the public's ability to hold insurers and the Commissioner accountable.

Consumer Watchdog once again urges the Department to withdraw the proposed regulatory amendments in their entirety. The Commissioner has provided no substantive evidence demonstrating that the proposed amendments are reasonably necessary to effectuate the statutes cited as authority in the February 13 amendments, including Insurance Code sections 1861.01, 1861.05, 1861.055, and 1861.10. Every consumer advocate that has submitted comments to the initial proposal and to the amendments opposes the regulations. By contrast, only insurers and their lobbyists and associated trade groups—who benefit from limiting

independent oversight and rolling back Proposition 103—support these regulations. That alignment leaves little doubt about the practical consequences of these amendments: diminished or eliminated independent consumer oversight of the insurance industry.

Consumer Watchdog remains committed to working collaboratively with the Department, other consumer groups, and policyholders to develop proposals aimed at *increasing* the number and diversity of consumer intervenors and strengthening public participation and transparency, while at the same time providing clear timelines and due process protections. We reiterate that such reforms that are truly necessary to effectuate the consumer participation requirements of Proposition 103 should include:

(1) streamlining the process for intervention and eligibility to seek compensation;

(2) mandating pre-hearing procedural protections and timelines;

(3) eliminating lengthy delays in compensation;

(4) providing a process for seeking interim compensation for nonprofit public interest organizations who are granted intervention in proceedings that can end up spanning years; and

(5) enforcing Proposition 103's transparency requirements by modernizing and streamlining public access to Department records—making it easier, not more difficult, for the public to monitor.

CONSUMER WATCHDOG'S PUBLIC COMMENTS ON THE AMENDED REGULATION TEXT

I. The Proposed February 13 Amendments to the Intervenor Compensation Regulations and Rules of Procedure for Rate Proceedings Conflict with Proposition 103, Its Underlying Purpose, and Caselaw Interpreting It.

Under the system of consumer participation and transparency established by voter-enacted Proposition 103, any person is authorized to initiate or intervene in proceedings on rate applications and other proceedings before the Department and courts, challenge actions of the Commissioner, and enforce the initiative's mandates. (Ins. Code § 1861.10(a).) Rate proceedings are initiated by consumers or their representatives when they request a hearing on insurers' rate applications (Ins. Code § 1861.05(c); 10 CCR § 2661.1(h)), and all proceedings are subject to procedural protections and transparency. (Ins. Code §§ 1861.07–1861.09.) The voters further provided that "[t]he commissioner or a court *shall* award reasonable advocacy and witness fees and expenses to any person who demonstrates that (1) the person represents the interests of consumers, and (2) that he or she has made a substantial contribution to the adoption of any order, regulation or decision by the commissioner or a court." (Ins. Code § 1861.10(b), emphasis added.) This statute "was intended to encourage consumer participation more broadly" than other

fee award schemes. (*State Farm General Insurance Company v. Lara* ("*SFG*") (2021) 71 Cal.App.5th 197, 216; see also *State Farm v. Garamendi* (2004) 32 Cal.4th 1029, 1045 [interpreting Proposition 103 consistent with its "goal of fostering consumer participation in the rate-setting process"].)

Existing regulations have long defined "substantial contribution" to mean "that the intervenor substantially contributed, as a whole, to a decision, order, regulation, or other action of the Commissioner by presenting relevant issues, evidence, or arguments which were separate and distinct from those emphasized by the Department of Insurance staff or any other party, such that the intervenor's participation resulted in more relevant, credible, and non-frivolous information being available for the Commissioner to make the Commissioner's decision than would have been available to a Commissioner had the intervenor not participated. A substantial contribution may be demonstrated without regard to whether a petition for hearing is granted or denied." (10 CCR § 2661.1(k), emphasis added.)[5]

Once this standard is met, a consumer representative is entitled to a "fully compensatory" fee award, including time spent on issues or arguments that may not be reached or that are ultimately rejected. (*SFG*, *supra*, 71 Cal.App.5th at 218.) As the Court of Appeal explained, "reasonable fees under section 1861.10(b) are not limited to work leading directly to the substantial contribution." (*SFG*, *supra*, 71 Cal.App.5th at 218.) Instead, "section 1861.10(b) requires only that advocacy fees be 'reasonable,' within the usual meaning of the term in the fees context: fair and appropriate under the circumstances." Indeed, "[i]nterpreting section 1861.10(b) to permit recovery of all reasonable fees supports [Prop 103's] purposes, by encouraging intervention in the first place and ensuring interveners can vigorously represent consumers once involved." (*Id*. at 219.)

The statute and the caselaw interpreting it consistent with its underlying purpose do not allow the Commissioner to second guess whether certain services and expenditures performed by consumer intervenors were "reasonably necessary to the fair resolution of the matter" or to carve out broad categories of services that he deems "unreasonable" and per se uncompensable.

A. Proposed Amendments Injecting New Subjective "Wasteful," "Duplicative," "Cumulative," and "Excessive" Standards to Reduce or Deny Compensation Conflict with the Statutory Requirements.

The Commissioner's February 13 amendments would override this settled statutory and judicial framework by imposing limitations fundamentally incompatible with Proposition 103. Proposed section 2662.5(d) introduces a series of "unreasonable" standards, nowhere found in

[5] In response to Consumer Watchdog and other consumer group comments on the October 3 amendments to 10 CCR § 2661.1(k), the February 13 amendments strike proposed language that would have conflicted with the statutory language and its purpose by requiring "a significant, distinct contribution to the Commissioner's adoption of a decision, order, or regulation."

statute, which purport to allow the Commissioner to deny or reduce compensation for work he deems "wasteful," "duplicative," "cumulative," or "excessive." These subjective standards would permit the Commissioner to arbitrarily deny or reduce compensation even when an intervenor has made a substantial contribution within the meaning of Insurance Code section 1861.10(b). Nothing in the statute authorizes the Commissioner to narrow the scope of compensable advocacy through such after-the-fact characterizations.

These invented standards violate the APA requirements that any regulation adopted by a state agency must be "consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute" (Gov. Code § 11342.2) and fail to satisfy the criteria of necessity, authority, consistency, reference, and clarity (Gov. Code § 11349.1(a)). A regulation that fails to comply with the APA is void. (See *Tidewater Marine W., Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 576.)

1. The Newly Proposed "Wasteful" and "Non-substantive" Standards Would Violate Prop 103, Its Underlying Purpose, the APA, and Due Process.

The proposed new "wasteful" standard is not authorized by Proposition 103 and would allow the Commissioner to cut fees for time spent on advocacy that he subjectively determines "address issues that do not bear on the propriety, sufficiency, or lawfulness of the rate application under review" or "extend beyond the scope of issues properly noticed or designated for resolution." (Proposed section 2662.5(d)(3).) This incomprehensibly vague standard, like the equally objectionable "vexatious" standard it replaces, would purportedly allow the Commissioner to deem non-compensable time spent developing or presenting evidence on issues and arguments he subjectively disagrees with, dislikes, or simply chooses to ignore, in direct contravention with Insurance Code section 1861.10(b)'s substantial contribution standard, which does not require an intervenor's arguments be adopted. (*SFG*, *supra*, 71 Cal.App.5th at 218.)

Similarly, the new "non-substantive" standard (proposed section 2662.5(d)(5)) deeming "unreasonable" any services "unrelated to the substantive resolution of the issues material to the determination before the Commissioner" could be used to deny compensation for time spent on arguments that the Commissioner disagrees with—again in direct conflict with the statutory substantial contribution standard.

To effectively participate in Department proceedings, consumer participants must necessarily probe and test the insurer's contentions and evidence (or lack thereof) through informal and formal requests for documents and respond to legal and actuarial contentions of both the Department and insurers. Yet under the proposed February 13 amendments, a consumer participant's submissions and contributions to the record could be retrospectively deemed "wasteful" or "non-substantive" because they take positions that differ from the Department and/or solicit evidence that the Department doesn't believe it needs. Rather than promoting consumer participation, the result would be to deter consumer representatives from fulfilling

their statutory role of meaningfully participating in rate and other proceedings to uncover additional evidence and offer viewpoints that differ from the Department, ultimately rendering intervention futile.

Labeling such effective advocacy "wasteful" or "non-substantive" would not only conflict with Prop 103's substantial contribution standard and its underlying purpose, but it would also invite impermissible content- and viewpoint-based retaliation. (See *Legal Servs. Corp. v. Velazquez* (2001) 531 U.S. 533, 548 [Constitution does not permit the Government to confine the scope of legal arguments to those it deems acceptable]; *Rosenberger v. Rector & Visitors of the Univ. of Va.* (1995) 515 U.S. 819, 829 ["When the government targets not subject matter, but particular views … the violation of the First Amendment is all the more blatant."]; *Bd. of County Comm'rs v. Umbehr* (1996) 518 U.S. 668, 673 [prohibiting retaliation against independent contractors for protected speech]; *O'Hare Truck Serv., Inc. v. City of Northlake* (1996) 518 U.S. 712, 717 [same].)

Moreover, the vagueness of the newly invented "wasteful" definition, including the undefined terms "propriety, sufficiency, or lawfulness," and the equally vague "non-substantive" standard will inevitably lead to arbitrary enforcement. Depending on which commissioner or delegated staff determines compensation requests, there is no way for a consumer participant to know in advance what issues one decisionmaker might deem to bear on the "propriety, sufficiency, or lawfulness" of a rate application while another may determine the same services spent on the same issues to be "wasteful" or "non-substantive." Such vague standards would not only violate the APA clarity requirement that regulations must "be easily understood by those persons directly affected by them" (Gov. Code § 11349(c)), but they would also violate due process by imposing standards that are not clearly defined and could be arbitrarily and discriminatorily enforced. (See *Grayned v. City of Rockford* (1972) 408 U.S. 104, 108–09.)

2. The Newly Proposed "Duplicative" and "Cumulative" Standards Also Conflict with Insurance Code Section 1861.10, the APA, and Due Process.

The newly proposed "duplicative" and "cumulative" limitations (proposed sections 2662.5(d)(1)–(2)) likewise conflict with the statutory substantial contribution standard and would defeat, rather than promote, consumer participation. Under the proposal, a consumer participant's expert analysis (from an actuary, for example) could be deemed "duplicative" when it doesn't "provide independent analytical value" by "corroborat[ing], validat[ing], detect[ing] errors in, or materially refin[ing] analysis or evidence in a document that has already been published by the Department or another party." Time spent advancing arguments that diverge, disagree, or seek to modify or expand past non-precedential decisions or orders of the Commissioner in a prior proceeding could similarly be labeled "cumulative," unless raised after a formal hearing, an event that only occurs in a small fraction of rate proceedings. Together, these limitations would entirely subsume the substantial contribution standard, which does not

require presenting analysis or arguments that agree with or corroborate the Department's analysis or the Commissioner's past orders or decisions.

Each proceeding presents new facts and circumstances and is a new opportunity for consumer participants to test the actuarial and legal analysis of both insurers and the Department. Whether or not those positions are ultimately accepted in an order or decision of the Commissioner, Proposition 103 affords the right to be compensated for time spent on alternative arguments (see *SFG*, *supra*, 71 Cal.App.5th at 218). It also preserves the right to seek judicial review of each order or decision of the Commissioner in every rate proceeding (Ins. Code § 1861.09). It does not authorize the Commissioner to chill or curtail a consumer participant's right to raise arguments that may have been previously rejected in his non-precedential decisions or orders in past Department proceedings under the threat of being denied compensation for time spent on those arguments.

Under Proposition 103, "any person may intervene in any proceeding permitted or established pursuant to this article." (Ins. Code § 1861.10(a).) So long as that person represents the interests of consumers and makes a substantial contribution, he or she is entitled to a fully compensatory fee award of all time reasonably incurred, not one narrowed by slicing away compensation for analysis that doesn't "corroborate, validate, detect errors in, or materially refine" the Department's "published" work.

The proposal also ignores practical realities. In most rate proceedings that are conducted by Department staff without holding a hearing presided over by an ALJ, the Department does not "publish" its own analysis or evidence in any document. Instead, the Department submits "objections" that may contain requests for additional data and information, so it would be impossible for any consumer participant to know what "published" document is going to be used later by the Commissioner to claim that its analysis didn't provide "independent analytical value."

The statute requires consumer participation and compensation precisely to generate a range of analyses performed by multiple expert witnesses, not just the Department's staff actuaries. In reality, the Department's actuaries who are under severe time constraints to conduct their review of hundreds of rate and rule filings per year cannot possibly catch every error or violation of the regulations and statutes; indeed, the Department's Rate Enforcement Bureau attorneys are only assigned to represent the Department as a party in the review rate applications when a member of the public petitions for a hearing and/or intervenes in a rate proceeding. Thus, a consumer participant's analysis is often the impetus for the Department's actuaries and attorneys analyzing and taking positions on issues raised by consumer intervenors, not the other way around. Yet, the proposed "duplicative" standard would allow all time spent on analysis that the Department incorporates into its own "published" analysis, leaving an intervenor the undue burden of proving its analysis added "independent analytical value."

When voters enacted Proposition 103, they deliberately created an independent consumer participation and advocacy system. They recognized that Department staff might be subject to budgetary constraints or other institutional or industry pressures and therefore ensured that consumer participants could express their own arguments, evidence, and viewpoints, be represented by their own advocates, and be compensated for zealous representation. As the Ballot Argument in Favor of Proposition 103 explained, the initiative sought to establish "a permanent, independent consumer watchdog system [that] will champion the interests of insurance consumers." (Emphasis added.) The broad substantial contribution standard enacted by section 1861.10(b) safeguards that independence.

Finally, the newly invented "duplicative" and "cumulative" definitions, which in turn use undefined and vague terms, suffer the same clarity and due process concerns as the "wasteful" standard by not being easily understood by those most impacted and subject to arbitrary and discriminatory enforcement. (See Gov. Code § 11349(c); *Grayned v. City of Rockford* (1972) 408 U.S. 104, 108–09.)

3. The New "Excessive" and Catchall Standards Would Improperly Impede Effective Consumer Participation and Advocacy.

The Commissioner's proposed "excessive" standard (proposed section 2662.5(d)(4)) would authorize denial of compensation for consumer advocacy if, after the fact, he determines that "the amount of time spent on a task, or the level of staffing employed for a task, was not reasonably proportionate to the scope and complexity of the task." The accompanying new catchall provision (proposed section 2662.5(d)(6)) would permit further denial of compensation for services deemed "[n]ot reasonably necessary to the fair resolution of the matter for any other reason." Together, these provisions inject sweeping discretion into a statutory scheme that already defines the governing standard and further disincentivize vigorous advocacy by consumer advocates necessitated in response to insurers' aggressive litigation tactics.

Existing law already provides mechanisms to ensure efficiency and relevance. Administrative Law Judges are empowered to control the course, conduct, and scope of proceedings, and rule on discovery disputes and evidentiary matters, including relevance and admissibility of evidence. (Gov. Code § 11507.7; 10 CCR § 2655.1; Gov. Code § 11512; 10 CCR § 2654.1) Allowing the Commissioner or executive staff to second-guess consumer advocate staffing decisions or litigation expenditures in preparing a responsive case in the face of the unlimited resources expended by insurers on outside private law firms and experts, under a vague "excessive" standard, would undermine that framework and effectively supplant the case-management authority invested in neutral ALJs. Consumer advocate intervenors who deploy the most vigorous and high-quality legal advocacy and expert analysis in accordance with scheduling orders and other directives of the ALJ will be at the greatest financial risk. The practical effect is clear: the more vigorously a consumer advocate challenges an insurer's rate request, the greater the financial risk of uncompensated work.

The proposed standard thus ignores the realities of the current prior approval rate system. Insurers routinely deploy substantial resources—outside counsel, actuarial experts, economists, and consultants—to defend rate applications. Consumer representatives must respond within compressed timelines and often under significant informational asymmetries. The statute does not require parity of resources, but it does guarantee compensation for reasonable advocacy that contributes to the record. A standard that permits retrospective judgments about what was "too much" advocacy, while not even considering the countervailing resources deployed by insurers, risks penalizing diligence and discouraging rigorous participation.

The same concerns apply with even greater force in rate proceedings resolved without a formal hearing, where no ALJ is presiding. The vast majority of rate challenges are resolved prior to any determination to grant or deny a petition for hearing; only two such hearings have been noticed in response to Consumer Watchdog petitions since 2015. Even in proceedings where a mandatory hearing is required by statute, CDI typically requires the parties to engage in informal discussions in an attempt to resolve the matter without a hearing. During this stage, Department staff, not independent ALJs, oversee the pre-hearing process and decisions on critical questions such as requests by consumer representatives for information from insurance companies, and there is no official evidentiary record. In those matters, under the proposed "excessive" standards, consumer representatives face potential ad hoc and arbitrary after-the-fact compensation reductions imposed by decision-makers with no connection to the proceeding. As a result, consumer advocates would be deterred from providing an effective counterbalance to the views and the vast resources of insurers, undermining Insurance Code section 1861.10's key purpose of promoting consumer participation in the rate-setting process.

The existing regulations already balance efficiency and accountability by requiring intervenors to document their hours, tasks performed, and hourly rates for each individual in detail. (10 CCR § 2662.3(d).) As the Court of Appeal concluded, "section 1861.10(b) requires only that advocacy fees be 'reasonable,' within the usual meaning of the term in the fees context: fair and appropriate under the circumstances." (*SFG*, *supra*, 71 Cal.App.5th at 218.) The statute and caselaw interpreting it do not allow the Commissioner to override the ethical obligations and legal judgment of a consumer representative by employing a vague "excessive" criterion that would only serve to discourage consumer participation and result in less fully developed records and diminished scrutiny of insurer's excessive rates and other illegal and unfair conduct.

B. Elimination of the Requirement for Insurers to Disclose Their Own Fees, Rates, and Costs Creates Further Inequities Between Insurers and Consumer Advocates.

Consumer advocates uniformly opposed the Commissioner's October 3 proposed amendment to eliminate the one long-standing parity rule, which requires an insurer or other party who challenges the reasonableness of any amount in an intervenor's request for compensation to disclose its own fees, rates, and costs expended in the same proceeding. The

February 13 amendments continue to strike that provision, which reads: "Any party questioning the market rate or reasonableness of any amount set forth in the request shall, at the time of questioning, provide a statement setting forth the fees, rates, and costs it expects to expend in the proceeding." (10 CCR § 2662.3(g).)

Rather than retain this long-standing parity requirement and strengthen it to ensure compliance, the Commissioner vaguely claims it was "difficult to enforce" and "triggered secondary disputes." (Initial Statement of Reasons ("ISOR"), Oct. 3, 2025, p. 38.) But insurers' alleged noncompliance is not a valid reason to abolish it altogether; it's an argument for effective Department enforcement of the law. Eliminating the disclosure requirement creates further imbalance between the parties, allowing insurers an unfettered right to attack consumer intervenor fees while concealing how much they spent to defend the same filing—expenditures insurers can pass through to policyholders.

The parity rule provides an objective benchmark for evaluating the reasonableness of compensation requests. Rather than maintaining an objective standard to provide a point of comparison to industry's fees, rates, and costs in determining the "reasonableness" of intervenors' requested compensation, the Commissioner's proposal imposes vague, subjective, and burdensome standards that will only serve to undermine effective consumer advocacy.

C. The February 13 Amendments Create New Barriers for Consumers to Request Eligibility to Seek Compensation in Department Proceedings.

The February 13 amendments impose new and unnecessary hurdles on individuals and organizations seeking eligibility to request compensation in Department proceedings. Under the existing regulations, requests for eligibility already require "a showing by the intervenor or participant that it represents the interests of consumers, including a description of the previous work of the intervenor or participant" along with extensive documentation, including articles of incorporation, bylaws, board information, nonprofit status documentation, annual reports, and a listing of funding sources for the prior 24 months. (10 CCR § 2662.2(a)(1)–(2)(A)–(G).) These requirements have long provided the Commissioner with sufficient information to determine whether an applicant represents the interests of consumers.[6]

The Commissioner's February 13 amended proposal retains two additional documentation requirements from his October 3 proposal that are not grounded in statute,[7] and adds a third equally objectionable new documentation requirement:

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[6] The current regulations provide further guidance: "'Represents the Interests of Consumers' means that the intervenor represents the interests of individual insurance consumer[s], or the intervenor is a group organized for the purpose of consumer protection as demonstrated by, but is not limited to, a history of representing consumers in administrative, legislative or judicial proceedings." (10 CCR § 2661.1(j).)

[7] See Consumer Watchdog's Public Comments, Nov. 20, 2025, pp. 27–31.

- A nonprofit's most recent annual tax return (retained proposed section 2662.2(a)(2)(F)).
- A statement of "actual or potential conflicts of interest that may compromise the intervenor's or participant's ability to represent the interests of consumers," which under the proposed regulation amendment could potentially include receiving a foundation grant or other funding to participate in agency proceedings; representing private clients; lobbying; or contributing to a candidate for public office (retained proposed section 2662.2(a)(2)(H)).
- A statement "[d]escribing how the intervenor or participant identifies and solicits consumer views or interests" with references to "evidence in support" (new proposed section 2662.2(a)(2)(I)); this new proposal provides no explanation of what is meant by "solicits" or how such an inquiry would be relevant to determining that a consumer group represents the interests of consumers.

None of these proposed documentation requirements appear in Insurance Code section 1861.10. Nor has the Commissioner demonstrated these new requirements are reasonably necessary to effectuate the statute or explain how they meet the APA's requirements of consistency, necessity, and clarity. (See Gov. Code § 11342.2; Gov. Code § 11349.1(a).) Moreover, the new proposals continue to raise First Amendment and government overreach concerns by seeking to delve into how consumer non-profits choose what issues to raise or viewpoints to take on those issues, notwithstanding the fact that the very Proposition 103 statutes they are seeking to enforce in Department proceedings are clearly statutes aimed at protecting the interests of consumers. The new provisions inject ambiguity and discretion into what was designed to be a straightforward threshold determination.

Finally, the February 13 amended text continues to delay the time for issuing a decision on a Request for Eligibility (extending it from 15 days to 50 days) and allows the insurance industry to weigh in on who can represent consumers in challenging their Prop 103 violations. (Proposed section 2662.2, subds. (c), (d), and (e).) Insurance Code section 1861.10 does not authorize the Commissioner to condition the right to seek compensation in Department proceedings on having to expend additional uncompensated time and expense responding to comments, including politically motivated and self-interested attacks by the insurance industry or other "interested parties" whose main goal is to eliminate consumer challenges to their unjustified rates and underwriting practices. This "fox guarding the henhouse" proposal would unnecessarily turn what is intended to be a streamlined procedure for obtaining a finding of eligibility into a highly politicized and lengthy process whereby insurance companies and their industry lobbying groups will organize campaigns to block their most vocal critics from participating in Department proceedings. Rather than furthering Prop 103's goal of promoting public participation, these proposed amendments would obliterate it.

D. The February 13 Amendments Continue to Strip Administrative Law Judges of Their Authority to Control the Course and Scope of Rate Proceedings, Undermining Due Process and Violating the Statutory Framework Erected by the Voters.

The Commissioner's February 13 amendments continue to strip ALJs of their current independent authority to conduct Proposition 103 hearings as required by Insurance Code section 1861.08 by: (1) eliminating ALJs' authority to review and approve settlements by the parties to a rate proceeding "unless and until the Commissioner commences a rate hearing by issuing a notice of hearing on the application or otherwise expressly delegates the matter to the Administrative Hearing Bureau," even in proceedings where a mandatory hearing is required by Insurance Code section 1861.05 (proposed amendment to section 2653.5), and (2) overriding the ALJ's authority to "exercise all powers relating to the conduct of [an administrative] hearing" (Gov. Code § 11512; see also 10 CCR § 2654.1) by giving an insurance company the right to appeal an ALJ ruling it dislikes to the commissioner in the middle of a proceeding (proposed amendment to section 2646.2(b)).

These proposed amendments directly conflict with Insurance Code section 1861.08, requiring that "[h]earings shall be conducted pursuant to Chapter 5" of the APA and "shall be conducted by administrative law judges." (Ins. Code § 1861.08.) Regulations purporting to override these express statutory requirements and that are wholly unnecessary to effectuate their purpose are thus plainly invalid. (See Gov. Code § 11342.5.)

E. The February 13 Amendments Include New Provisions that Appear to Be Aimed at Denying Consumer Participation and Compensation in Proceedings That Do Not Proceed to a Formal Evidentiary Hearing, in Violation of the Law.

The February 13 amendments (proposed sections 2651.1(h) and 2661.1(e)) purport to carve out the pre-hearing state and procedures of rate, rulemaking, and noncompliance proceedings from the definition of a "proceeding."[8] While infected by the same drafting

[8] These newly proposed amendments fail to comply with the APA's notice requirements. Government Code section 11346.8(c) forbids a state agency from adopting "a regulation which has been changed from that which was originally made available to the public pursuant to Section 11346.5, unless the change is (1) nonsubstantial or solely grammatical in nature, or (2) sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action." A 15-day notice is only permitted for "a sufficiently related change." (Gov. Code § 11346.8(c).) Because these two proposed changes attempting to completely alter the definition and scope of a "proceeding" are not sufficiently related to the originally proposed October 3 text, CDI was required to provide the public with an additional 45-day notice and comment period under Government Code section 11346.4(a). (See *Wendz v. State Dept. of Education* (2023) 93 Cal.App.5th 607, 647–648 [striking amendments not described in the agency's Initial Statement of Reasons, reasoning that "[i]f the notice does not provide any 'specific indication' of the changes [the agency] might try to

ambiguities that pervade other proposed provisions, these new changes could impermissibly be interpreted to entirely preclude or curtail consumer participation in rate proceedings challenging rate hikes under the 7% mandatory hearing threshold and/or in the pre-hearing portions of rate proceedings where hearings are required to be granted under Insurance Code section 1861.05(c). If these amendments are intended to be applied in a manner to deny or restrict consumer participation and compensation in rate and other Department proceedings, they conflict with Insurance Code sections 1861.05 and 1861.10, their underlying purpose, and caselaw interpreting them.

In upholding the Department's regulation defining a "rate proceeding" as commencing upon the filing of a petition for hearing (10 CCR § 2661.1(h)), which is unchanged by Commissioner Lara's proposed amendments, the Court of Appeal interpreted Proposition 103 to afford consumer participation and compensation in the pre-hearing stages of the rate review process. The Court of Appeal held that Insurance Code section 1861.10(b) "allows compensation for participation in the rate-setting process beginning with the submission of a petition for a hearing or the Commissioner's notice of a rate hearing, *even if there is no public rate hearing*" and that "Proposition 103 … expressly provide[s] for consumer participation in other aspects of the rate review process in addition to participation in a rate hearing." (*Association of California Ins. Cos. v. Poizner* ("*ACIC*") (2009) 180 Cal.App.4th 1029, 1047 and 1051, emphasis added.) In reaching this conclusion, the *ACIC* court reasoned:

> To read sections 1861.08 and 1861.05 as limiting public participation to rate hearings is contrary to the uncodified provision of Proposition 103, stating that "'[t]his act shall be liberally construed and applied in order to fully promote its underlying purposes.' (Stats.1988, p. A–290, § 8.)" (*Farmers Ins., supra,* 137 Cal.App.4th at p. 852, 40 Cal.Rptr.3d 653.) Such a construction is also contrary to the goal of fostering consumer participation in the administrative rate-setting process, one of the purposes of Proposition 103. (*State Farm Mutual Automobile Ins. Co. v. Garamendi, supra,* 32 Cal.4th at p. 1035, 12 Cal.Rptr.3d 343, 88 P.3d 71.)

(*ACIC*, *supra*, 180 Cal.App.4th at 1051–1052.)

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make, or if the final rule concerns a different issue altogether, notice may be inadequate because commenters will be hampered in effectively opposing those changes."]) Here, the original October 3 notice, proposed text, and Initial Statement of Reasons did not provide the public "any specific indication" that the Commissioner intended to make wholesale revisions to the definitions of "proceeding" in 10 CCR sections 2651.1(h) and 2661.1(e) to exclude a multitude of "procedures" that have previously been included in that definition and collectively encompass the pre-hearing stages of a rate proceeding. The public was therefore not given sufficient notice of these amendments and they should be stricken as a result. (*Id*. at 648.)

If the intent of Commissioner Lara's February 13 newly proposed amendments to sections 2651.1(h) and 2661.1(e) redefining "proceeding" is to exclude public participation in a rate proceeding when no hearing is held, then these new amendments would contravene the express mandates of Insurance Code section 1861.10 and its underlying purpose to foster consumer participation. (See *ibid*.) Similarly, if these amendments are aimed at disallowing compensation for performing the necessary steps to initiate, intervene, and be compensated in Prop 103 proceedings, they would further undermine rather than promote consumer participation. Preparing petitions for hearing, petitions to intervene, and requests for compensation, as well as responding to insurer's oppositions to these petitions and requests, requires significant time that is necessarily incurred by consumer participants in order to effectively participate in Department proceedings. The Commissioner has offered no explanation as to how these provisions are consistent with the statutes or reasonably necessary to effectuate their purposes.

II. The February 13 Amendments Do Nothing to Further the Commissioner's Stated Objective of Meaningful Public Participation.

In his press release announcing the proposed February 13 amendments, the Commissioner claimed his "reforms are designed to uphold one of the core purposes of Prop. 103 – meaningful public participation."[9] Yet these proposed amendments will do the exact opposite by rendering meaningful participation financially infeasible and gutting procedural due process protections and independent oversight of Department proceedings by Administrative Law Judges. Tellingly, the February 13 amendments fail to adopt a single proposal offered by Consumer Watchdog or other consumer advocates to expand the number and diversity of intervenors.[10] This glaring lack of engagement with consumer advocates combined with Commissioner Lara's public comments expressing hostility to consumer participants like Consumer Watchdog and the intervenor process in general[11] and grandiosely declaring himself

[9] Feb. 13 CDI Press Release, *supra*, note 2.
[10] See Consumer Watchdog's Public Comments, *supra*, note 7, pp. 50–51.
[11] As just a sampling of his public statements, the Commissioner has stated, "More than three decades ago, Prop 103 established a role for public participants known as intervenors to represent consumers' interests in the proceedings. In my opinion, that's the job of the men and women of the Department of Insurance" (Assembly Insurance Committee testimony, July 7, 2025, at 56 min 38 sec, https://www.assembly.ca.gov/media-archive); has stated that it was "unfortunate[]" that filings had been intervened in (Assembly Insurance Committee Oversight Hearing, May 15, 2024, at 45min 1sec, https://www.assembly.ca.gov/media/assembly-insurance-committee-20240515); claimed that "what [Consumer Watchdog] do[es] is what the Department of Insurance already do[es]" (Cal Matters interview, Sept. 19, 2024, at 56min, https://www.youtube.com/watch?v=4GuOMJakOrc; see also Assembly Insurance Committee, July 2, 2025, at 56min, 38sec, https://www.assembly.ca.gov/media/assembly-insurance-committee-20250702); and alleged that intervenors "traditionally will intervene on the biggest companies [because] they get the most money out of these companies" (Assembly Standing

and the Department to be "the voice of consumers"[12] reveals the true intent of his proposals: to fulfill insurance companies' desires to rush the approval of rate hikes at the expense of the careful public scrutiny required by Proposition 103. By erecting ambiguous and subjective standards aimed at denying or reducing compensation for vigorous consumer advocacy and restricting procedural protections to only apply to formal hearings, the Commissioner's proposals will not withstand judicial scrutiny.

III. Consumer Watchdog Remains Committed to Developing and Advocating for Reforms That Would Truly Promote Consumer Participation, Transparency, and Efficiency.

Consumer Watchdog reiterates its recommendations to withdraw the proposed amendments and to improve Proposition 103's intervenor process in ways that would promote rather than thwart the statute's policy goals of transparency, accountability, and meaningful public participation.[13] Consumer Watchdog's proposals include:

1. Reinstating neutral Administrative Law Judges' review of compensation requests and restoring their independent authority to oversee and control the course and scope of Department proceedings.

2. Restoring and enforcing the requirement that insurance companies that object to requests for compensation of advocacy and witness fees and expenses by consumer intervenors must disclose their own fees and expenses in the same proceeding.

3. Streamlining, rather than complicating, the process for requesting eligibility to seek compensation and submitting compensation requests.

4. Adhering to the regulatory 90-day timelines for issuing requests for compensation.

5. Simplifying the process for intervening and participating in Department proceedings and providing information and assistance for individuals and consumer groups who may not initially have the necessary technical or substantive expertise.

6. Restoring the ability of consumer representatives to seek interim compensation for lengthy and complex proceedings.

Committee on Insurance, Sept. 17, 2024, at 25min 5sec, https://digitaldemocracy.calmatters.org/hearings/258335?t=425&f=f281392ccc050e33583e2a516b54951b; in fact, Consumer Watchdog traditionally intervenes on the largest insurers because those are the filings with the biggest consumer impacts). Most recently, the Commissioner accused intervenors broadly of "creat[ing] chaos," profiting "in the millions," and "undermining" Department efforts ("Judge sides with Commissioner Lara, upholding authority to protect consumers and stabilize the CA FAIR Plan," Cal. Dept. Ins., July 23, 2025, https://www.insurance.ca.gov/0400-news/0100-press-releases/2025/statement051-2025.cfm).

[12] Feb. 13 CDI Press Release, *supra*, note 2.

[13] See Consumer Watchdog's Public Comments, *supra*, note 7, pp. 50–51.

7. Providing stronger procedural protections in the pre-hearing process to enforce fundamental due process rights to elicit evidence from insurers, to maintain separation of agency functions, and to enforce prohibitions on ex parte communications with the Commissioner or his executive staff during the pendency of proceedings.

8. Adopting and enhancing genuine modernization where it strengthens participation by:

- Adopting electronic filing systems for pleadings, motions, briefs, and other documents filed with the Administrative Hearing Bureau ("AHB") to enable online public access to Department and AHB records;
- Providing the public with easy online access to insurer rate and financial data and filings in digital form; and
- Improving systems for providing public notice of rate applications, other insurer filings, proposed regulations, and Department proceedings and hearings, including by providing multilingual notices and educational materials.