273 Delmar Way • San Mateo, CA 94403 • (650) 307-7033 • rholober@outlook.com

March 2, 2026

Before the California Insurance Commissioner

RE: REG-2025-00006 (AS AMENDED FEBRUARY 13, 2026). INTERVENOR AND ADMINISTRATIVE HEARING BUREAU FAIRNESS AND ACCOUNTABILITY

Comments of Consumer Federation of California Education Foundation on Proposed Regulations

The non-profit Consumer Federation of California Education Foundation submits these comments for the consideration of the Department of Insurance in the above-referenced matter.

On or about November 20, 2025, the Consumer Federation of California Education Foundation (Hereinafter "CFCF") submitted comments to the Department of Insurance (Hereinafter "Department") on the initial set of regulations in the above-referenced matter issued by the Department on October 3, 2025. We incorporate our November 20, 2025 comments into these comments. The critique we furnished to the initial October 3, 2025 regulations continues to apply to the February 13, 2026 amended regulations. CFCF's instant comments elaborate on our prior comments and address new issues that stem from the Department's amended regulation.

CFCF has a direct interest in REG-2025-00006, because it would profoundly affect our ability to effectively represent policyholders, and because it undermines the intent and purpose of voter-enacted Proposition 103, which is to "protect consumers from arbitrary insurance rates and practices, to encourage a competitive insurance marketplace, to provide for an accountable Insurance Commissioner, and to ensure that insurance is fair, available, and affordable for all Californians."

CFCF has intervened in some twenty closed Department proceedings, including rate cases, rulemaking cases and enforcement cases. CFCF is a consumer intervenor in five rate application proceedings that are currently pending at the Department.[1]

[1] File Nos: IP-2025-0009, IP-2025-0008, IP-2025-00010, IP-2025-0007, IP-2025-00015.

The Department's process is not in compliance with the Administrative Procedures Act

The Department's website states:

> In accordance with Government Code Section 11340, et seq., the California Department of Insurance (CDI) must comply with the procedures prescribed in the Administrative Procedure Act (the Act). The Act provides the procedures the CDI must undertake in order to adopt regulations. This process is also called the "rulemaking" process. The purpose of the Act is to provide information to the public regarding regulations that are proposed by the CDI. The public is then able to provide written comments on the regulations during the rulemaking process. After the rulemaking process is complete, the regulations go through an adoption process. When the regulations are adopted, they are binding and have the force of law. The CDI can then promulgate the regulations where applied in Title 10.[2]

The proposed regulations fail the "Necessity" test

California Government Code §11349.1 (a) sets the six standards that the Office of Administrative Law applies in considering the adequacy of the rulemaking process. The first of these standards is "Necessity." The Department's website acknowledges the necessity standard.

Government Code §11349 (a) defines "Necessity."

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

The record of this rulemaking proceeding fails this necessity test. In its Initial Statement of Reasons, dated October 3, 2025, the Commissioner states that since the last substantial amendments to the intervenor regulations occurred in 2006, these regulations have become "less optimally structured" to achieve Proposition 103's intent and purpose. Specifically, the "deficient" elements of the current regulations relate to: 1) the increasing volume and complexity of rate filings; 2) the clarity, predictability, and administrative efficiency of the current intervenor regulatory process; 3) the concentration of interventions among a small number of recurring participants; and 4) the improper delays and exercises of discretion by administrative law judges in certain instances.

[2] www.insurance.ca.gov/0250-insurers/0500-legal-info/0200-regulations/rule-making-process.cfm#:~:text=Guidance%20/%20Rulemaking%20Process,Rulemaking%20Process,where%20applied%20in%20Title%2010

However, the Initial Statement of Reasons does not provide substantial evidence of the need for this regulation to effectuate the purpose of Proposition 103. The Department did not provide any facts, studies, and expert opinions to validate its claim of necessity. Instead, it relies on the vague generalization that "Stakeholders – including consumer groups, insurers, and members of the general public – have expressed concerns that the current system does not strike an appropriate balance among the goals of public participation, fairness to all parties, procedural efficiency, cost-effectiveness, and transparency."[3] It does not back up this claim. The record of the proceeding demonstrates that facts, studies and expert opinion contradict the Department's unsubstantiated assertion of necessity. In comments submitted to the Department on or around November 20, 2025, Consumer Watchdog and CFCF describe in detail the savings of several billion dollars that insurance policyholders have attained through their intervention in rate cases. Consumer Watchdog's analysis of the amount of time the Department took to process applications with and without intervenors shows that intervention has not caused meaningful delays. CFCF's comments discussed our experience with Department-created delays. Together these comments refute the Department's contention that the intervenor process has created improper delays in the processing of rate applications. CFCF's comments explain why the concentration of intervention among a small group of consumer advocacy groups is the direct result of the already complex intervention process and explain that the proposed regulation would create new and insurmountable hurdles that would only make the process of participation more daunting to other potential intervenors. The comments of Adam Cole, the Department's former General Counsel provides expert testimony that the current intervenor regulations have not been problematic to the proper functioning of the Department's rate review and regulatory process. In his experience for over seven years, intervenors "nearly universally provided input that helped us [the Department] evaluate insurers' rate submissions and led us to make better and more informed decisions."

Government Code §11346.2 (b) (3) states than an agency shall prepare and submit with a notice of a proposed action "(a)n identification of each technical, theoretical, and empirical study, report, or similar document, if any, upon which the agency relies in proposing the adoption, amendment, or repeal of a regulation."

The Department did not comply with this requirement that "necessity" for the proposed regulation must be based on facts, studies, and expert opinion. The Department has not cited any such studies, reports or similar documents in promulgating this regulation. Despite the Department's failure to create a foundation based on well-researched facts to justify the necessity of its proposed regulation, that record has now been created, in the form of comments provided by two organizations with the greatest expertise in the actual functioning of the intervenor process and in the expert testimony of the Department's former General Counsel, all refuting the necessity for these regulations. As a result, the Department should withdraw these proposed regulations and any Final Statement of Reasons should correct the record and state that the record now demonstrates that there is no necessity for these regulations.

[3] "Initial Statement of Reasons, Intervenor and Administrative Hearing Bureau Fairness and Accountability, REG-2025-00006" California Department of Insurance, October 3, 2025, page 2.

The Department's economic impact assessment is inaccurate and insufficient

Government Code § 11346.3 (a) states in part "A state agency proposing to adopt, amend, or repeal any administrative regulation shall assess the potential for adverse economic impact on California business enterprises and individuals…" Government Code § 11346.3 (b) (1) (d) states that the mandatory economic impact assessment must include "(t)he benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment." The Department failed to assess the potential adverse impact of its proposed regulation on the economic welfare of tens of millions of California residents who are insurance policyholders. Had it conducted a proper assessment of the record, the Department would have: (1) found that the intervenor program has saved personal insurance policyholders some seven billion dollars over a 22 year period, in the form of reducing excessive rate requests; and (2) found that instead of conferring a benefit, the likelihood that the implementation of regulations that erect substantial hurdles to intervenor participation would impose on millions of California consumers additional unwarranted excessive insurance premium costs of billions of dollars, undermining the welfare of working and retired Californians who are struggling with skyrocketing prices. The economic impact assessment avoided an examination of these adverse economic consequences on California residents.

Rate setting exemption to the Administrative Procedures Act does not apply.

Government Code § 11340.9 (g) provides that a regulation that establishes or fixes rates, prices, or tariffs" is exempt from the Administrative Procedures Act. It can be argued that a rate-setting proceeding on an application by an insurance carrier may fall under this exemption. In contrast, REG-2025-00006 does not establish or fix any rate, price or tariff. It addresses the rules that would govern the participation of intervenors in proceedings under Proposition 103. It is a rulemaking proceeding, not an exempt ratemaking proceeding.

The amended regulations contain vague and ambiguous language that appears to eliminate compensation prior to the commencement of a formal administrative hearing.

Insurance Code §1861.10(b) states "The 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. Where such advocacy occurs in response to a rate application, the award shall be paid by the applicant."

The Department's established practice acknowledges that approved stipulated settlements are decisions or orders of the Commissioner, and intervenor participation in a stipulated settlement is compensable activity. Stipulations that have settled rate cases typically include the following language: "Consistent with 10 CCR § 2656.1(b) and 2662.3(c), no agreement regarding Petitioner's compensation has been made. However, the Parties agree that the Commissioner's approval of the Application, consistent with this Stipulation, will be a decision or order within

the meaning of CIC section 1861.10(b). Petitioner agrees to submit any request for compensation to the Public Advisor within 30 days after notice of the Commissioner's approval."[4]

The February 13, 2026 amendments introduce new Section 2651.1 (h) language that is potentially in conflict with Department regulations and practice under Insurance Code §1861.10(b). This new language attempts to change the definition of a "proceeding" subject to the intervenor program. It utilizes a term of art called "procedures" that appear to fall outside of the scope of a compensable proceeding. These potentially non-compensable activities include :

> (1) the procedure that is commenced by submitting a petition for hearing pursuant to Section 2653.1 and concluded by the issuance of the determination to grant or deny a hearing pursuant to Section 2653.5,
> (2) the procedure for intervention in a rate or class plan proceeding specified in Section 2661.3,
> (3) the procedure for participation in a proceeding other than a rate hearing specified in Section 2661.4,
> (4) the procedure specified in Section 2662.2 that is commenced by providing the request for finding of eligibility to seek compensation and concluded by the issuance of a ruling on a request for finding of eligibility to seek compensation, or
> (5) the procedure that is commenced by submitting a request for an award of compensation pursuant to Section 2662.3 and concluded by the issuance of the decision awarding compensation pursuant to Section 2662.6.

This language could be interpreted to eliminate compensable activity prior to the commencement or after the conclusion of a formal hearing. This interpretation would cut off the intervenor's arms and legs. Virtually all interventions are settled through a discussion and stipulation process. Our November 20, 2025 comments describe in detail the stipulated settlement process that concluded over 98% of all interventions in the past two decades without holding a hearing before an ALJ. Intervenors including the CFCF would typically come to an agreement with the other parties, including the Department, that a settlement advances the public policy purposes of Proposition 103 to establish rates that are fair and not excessive, inadequate or discriminatory. These stipulated settlements have reduced proposed insurance rate increases by seven billion dollars over two decades.

Intervenors put in substantial work hours during this stipulated settlement process. The work CFCF and other intervenors conduct that takes place before a formal hearing is ordered includes:

- Review and analysis of rate filing and other available documents in preparing a petition for intervention and petition for hearing.
- Preparation of requests for information to send to filer.
- Continuing review and analysis of rate filing and other available documents.
- Review of responses to request for information from the insurer and other documents.
- Preparation of additional requests for information if needed.

[4] See for example File No PA-2017-0002 Settlement Stipulation

- Continuing repetition of the above-listed steps as needed to obtain data and information to analyze filing.
- Submission of results of analysis to the Department.
- Preparation for a settlement meeting/conference with the Department and insurer.
- Participation in settlement meeting/conference with the Department and insurer.
- Review of any additional information provided as a result of the settlement meeting/conference.
- Preparation of additional analysis and requests for information as needed.
- Preparation for a follow up settlement meeting/conference with the Department and insurer.
- Participation in follow up settlement meeting/conference with the Department and insurer.
- Repeating these prior steps as needed until a settlement is reached or the case is sent for a formal hearing.

The new definitions of "procedures" in Section 2651.1 (h) may be interpreted to deem all of the work that is itemized above as non-compensable "procedures" activity. Disallowing compensation for an intervenor's work in reaching a stipulation/settlement agreement would be inconsistent with established practices and Insurance Code §1861.10(b).

If the Department intends to transform the many hours of work of intervenors prior to the commencement of a hearing into non-compensable activity, the Department is effectively eliminating the intervenor process. It could also have the perverse result of significantly increasing the number of lengthy hearings in rate applications. Proposition 103 grants consumers the right to insist on a hearing in a case involving a proposed increase exceeding seven percent. Should an intervenor's work in a case that is settled through a stipulation become non-compensable, an intervenor would be incentivized to avoid stipulations in rate applications exceeding seven percent, and perform the bulk of its work to the period of preparation for a hearing. This would damage a stipulation process that has worked well for decades, resulting in lengthy hearing-related delays in the processing of rate applications. The Department should consider this consequence – a consequence that CFCF does not seek.

Alternatively, insurers could evade the accountability that intervention creates by adopting the stratagem of filing an endless compounding series of 6.9% rate applications. Either way, the proposed amended language damages the public policy goal of enabling consumer intervention while achieving greater efficiency by minimizing the frequency of formal hearings. The Department should withdraw this language.

This section also eliminates compensation for the intervenor's work preparing an intervenor compensation request. As we explained in our November 20, 2025 comments, California courts have upheld the role of compensable consumer intervention in insurance rate setting and regulation. Preparation of a request for compensation entails tedious labor-intensive work. It is integral to the purposes of Proposition 103, which includes the advancement of consumer participation in insurance rate matters. Eliminating compensation for the work in preparing a request for compensation within a grab bag of new Section 2651.1 (h) "procedures" that are non-

compensable unveils the regulation's intent – which is to whittle down the entire intervenor process. The Department should withdraw this language.

The amended regulations add new requirements for intervenor finding of eligibility that are not consistent with law.

Insurance Code § 1861.10 (b) states that to qualify for compensation, an intervenor must demonstrate that it "represents the interests of consumers." Proposed new Section 2662.2 (a) (2) (I) (1) and (2) as amended add new eligibility standards for intervenors, requiring a statement describing how the intervenor or participant identifies and solicits consumer views or interests, including reference to evidence in support of that description. Representation may be demonstrated through various activities and methods that do not necessitate solicitation of consumer views. This language is gratuitous, in conflict with Proposition 103, and it should be withdrawn.

The amendments impose new restriction on timing of compensable services.

Section 2662.5 (b) as amended adds new language stating that fees are reasonable if they were reasonably necessary "at the time such services were performed." This language is ambiguous and may be interpreted to have a chilling effect on intervenors' efforts to seek out information that may not be apparent when first analyzing a rate filing, but that becomes reasonable during the proceeding should an intervenor uncover a new problem with the filing. Department regulations should enable the full participation of intervenors. Creating vague new time-specific restrictions on an intervenor's work will only inhibit robust intervention. As with much of the language in this proposed regulation, this new language slices away at the capacity of intervenors to fulfill their role in representing consumer interests. The Department should withdraw this language.

The amendments include new catch-all language to deny compensation.

The amendment adds Section 2662.5 (6), which creates a new sweeping basis to deny compensation for services that are "(n)ot reasonably necessary to the fair resolution of the matter for any other reason." Compensation should be based on an intervenor's substantial contribution to the Department's consideration of a proceeding. Granting the Commissioner a broad discretion to determine that intervenor activity is not compensable "for any other reason" undermines the substantial contribution standard. The Department should withdraw this language.

Conclusion

The Department has not demonstrated that a necessity exists to enact REG 2025-00006. It has not created a record of facts, studies, reports, and expert opinion. The Department has not cited any such studies, reports, similar documents and expert testimony on which the proposed regulation relies. On the contrary, the record that has now been created in the course of this proceeding contains reports, studies and expert testimony that makes it clear that the intervenor

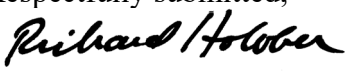
program is functioning as envisioned to allow consumer participation in Department rate and rulemaking cases, at a tiny cost that is paid back hundreds of times over in the saving that policyholders receive. The record also disproves the unsubstantiated claim that intervention causes any problematic delays in the processing of rate applications.

The Department's economic impact assessment is inadequate because it fails to examine the regulation's potential adverse impact on the welfare of millions of policyholders who would pay billions of dollars in excessive and unfair insurance premiums should the intervenor process be dismantled.

Tearing down the intervenor process remains the goal of the amended regulation. Instead of the frontal attack of rewriting the definition of a "substantial contribution," as was the case in the initial October 3, 2025 draft, the amended regulation debilitates the intervenor process by systematically removing from its scope almost all of the activities that makes effective intervention possible. Should the Department adopt these regulations, it is far from unlikely that it will interpret them to eliminate the stipulated settlement process as compensable intervention activity. As daunting as it is now for consumer groups to participate as intervenors, the proposed regulation would create new insurmountable barriers. The proposed regulation violates the spirit and letter of a voter-enacted law that calls for effective consumer participation in insurance rate and regulatory matters. The Department should withdraw the proposed regulation.

Thank you for your attention to these comments.

Respectfully submitted,



Richard Holober, Treasurer
Consumer Federation of California Education Foundation