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**

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[1] 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[2] 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

[1] https://www.insurance.ca.gov/01-consumers/180-climate-change/SustainableInsuranceStrategy.cfm
[2] 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.[3] 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[4] with the Insurance Commissioner's prior approval.[5]

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[6] 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[7], 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

[3] Cal. Ins. Code § 10094, subds. (b) & (c); § 10095, subd. (c).
[4] Cal. Ins. Code § 10095, subds. (a) & (c).
[5] Cal. Ins. Code § 10095, subd. (c).
[6] 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.
[7] 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[8].

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:

[8] 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.
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>> 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.

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