

## **FINAL STATEMENT OF REASONS**

November 17, 2010

File Number: REG-2010-00001

### **REGULATIONS ON STANDARDS AND TRAINING FOR ESTIMATING REPLACEMENT VALUE ON HOMEOWNERS' INSURANCE**

#### **UPDATED INFORMATIVE DIGEST**

The California Department of Insurance (“Department”) gave Notice of Regulatory Action on April 2, 2010. Subsequently the Department received a number of comments concerning the noticed proposed regulations. In response thereto, on October 27, 2010, the Department gave Notice of Availability of Changed Text and of Addition of Material to Rulemaking file and of the Amended Text of Regulations. The proposed amended regulations take into consideration the changes requested by the comments received and act to more clearly set forth the obligations of licensees when communicating an estimate of replacement cost in the homeowner insurance market.

The Informative Digest published in the Notice of Proposed Action indicated that the regulations specified certain requirements, including disclosure requirements, for construction cost estimates that did not qualify as replacement costs estimates, as defined. The regulations were subsequently amended to eliminate these separate requirements for construction cost estimates. In the amended text of regulation, the definition of the term “replacement cost” has been broadened, and a definition of the term “replacement cost estimate” has been added, so that these “other” construction cost estimates now fall within the definitions of replacement cost and of replacement cost estimates. However, language has been added in the amended text of regulation restricting the regulations’ substantive requirements on the use of these estimates to situations where they are communicated in the context of certain homeowners’ insurance policies.

#### **UPDATE OF INFORMATION CONTAINED IN INITIAL STATEMENT OF REASONS**

As above, on October 27, 2010, the Department issued a Notice of Amendment to Text of Regulation. In consideration of public comments received in response to the originally noticed text of regulations the Department has amended the regulations. When the amended text is quoted herein, the amended portion is indicated by double underline, and deletions are indicated by ~~double strikethrough~~.

There were comments that because of the nature of the type of construction, manufactured homes (mobile homes) are generally not reconstructed but replaced following a total loss. The Department concurs that the replacement cost estimate process is different than the process for site-built homes. As the comments suggested, replacement cost estimators for manufactured homes typically do not provide components such as foundation costs, whether the structure is

located on a slope, the type of frame, or nonstandard wall heights.

Based upon comments regarding reference to manufactured (mobile homes), proposed Section 2188.65 (a) (1) and proposed Section 2695.180 (a) are amended as follows:

“‘Homeowners’ insurance policy” shall have the same meaning as “policy of residential property insurance” as defined in subdivision (a) of Insurance Code section 10104, ~~except that a policy covering an individually owned mobile home shall also constitute a homeowner’s insurance policy.”~~

Comments were received that use of the terms “replacement value” and “replacement cost” created ambiguities and clarity problems, as these terms relate to operating provisions of these proposed regulations. Since the standards set forth in these proposed regulations more specifically address that the costs shall include all expenses that would reasonably be incurred to rebuild the structure in its entirety [Section 2695.180(a)] and shall not include a deduction for physical depreciation [Section 2695.180(d)], the terms “replacement value” and “replacement cost” should not be defined so narrowly. Therefore, proposed Section 2188.65 (a) (2) is amended as follows:

“‘Replacement value’ shall have the same meaning as “replacement cost” and is defined as the amount it would cost to repair, construct, rebuild or replace a ~~completely~~ damaged or destroyed structure, ~~without a deduction for physical depreciation.”~~

In the same regard, proposed Section 2695.180 (b) is amended as follows:

“ ‘Replacement value’ shall have the same meaning as “replacement cost” and is defined as the amount it would cost to repair, construct, rebuild or replace a ~~completely~~ damaged or destroyed structure.”

Further, to clarify that estimate of replacement value shall have the same meaning as estimate of replacement cost, and to assure that there are no ambiguities concerning their meaning, proposed Section 2695.180 (e) has been added as follows:

“‘Estimate of replacement value’ shall have the same meaning as ‘estimate of replacement cost’ and means any estimate, statement, calculation, approximation or opinion, whether expressed orally or in writing, regarding the projected replacement value of a particular structure or structures.”

Proposed Section 2188.65 (b) provided California fire and casualty broker-agents and personal lines broker agents ninety days after the effective date of the section to complete one three hour training course. The Department received comments that ninety days would not provide sufficient time in which to complete the course. Additionally, there was concern that those who had already taken the course would be required to take it again. So as to provide broker-agents sufficient time to meet the requirement, the amended language provides for 180 days. Further, the proposed amended regulation clarifies that the requirement is limited to those who have not already completed such training as follows:

“On ~~and~~ or after the day that is ~~ninety~~ 180 days after the effective date of this section, every California resident fire and casualty broker-agent and personal lines broker-agent who has not already taken a homeowners’ insurance valuation training course must satisfactorily complete one three-hour training course on homeowners’ insurance valuation meeting the requirements of this section prior to estimating the replacement value of structures in connection with, or explaining the various levels of coverage under, a homeowners’ insurance policy ~~soliciting individual consumers in order to sell dwelling fire or homeowners’ insurance~~. For resident broker-agents, this requirement shall be part of, and not in addition to, the continuing education requirements of Insurance Code section 1749.3. The homeowners’ insurance valuation training course needs to be taken only once in order to satisfy the requirements of this subdivision (b).”

Because one of the issues surrounding the need for training on estimating replacement cost surrounds potential underinsurance of dwellings [where there are not sufficient insurance proceeds under the policy], proposed Section 2188.65 (d) (1) is amended as follows:

“How loss settlement provisions in an insurance policy apply to major claims, ~~and~~ the potential causes of underinsurance and the potential effects that underinsurance may have on settlement.”

Section 2188.65 (d) (3) required that the broker agent training must include the components of a structure necessary to estimate replacement cost, including but not limited to the listed items. Comments offered that the term “components” alone was unclear. In this regard, the Department has amended the proposed regulations to add the term “features.” Further, a number of comments stated that the “including but not limited to” language was problematic. Since the regulations required consideration of specific components, the comments argued that “including but not limited to” would require licensees to consider other components not delineated. In this regard, the amended proposed regulation has been amended as follows:

“The several components and features of a structure necessary to estimate replacement cost, as well as ~~all the~~ other costs incident to reconstruction, including ~~but not limited to~~ at least the following:”

Based upon comments and in the interest of assuring that the regulations are clear concerning the licensees’ obligations in estimating replacement value to consider the types of interior features and finishes, the proposed regulations are amended. Proposed amended Section 2188.65 (d) (3) (I) provide a more specific statement that the licensee is required to consider generic types of interior features and finishes, and provide, as well, examples, where applicable, as follows:

“Materials used in, and generic types of, interior features and finishes, such as, where applicable, the type of heating and air conditioning system, type of walls, type of flooring, type of ceiling, fireplaces, type of kitchen and type of bath(s)”

Based upon comments that the proposed regulations were unclear regarding how architect’s plans, and permits should be factored into an estimate of replacement cost, the proposed regulations are amended. Further, consideration of “engineering reports” is eliminated as a specifically required component to be considered, as not all rebuilding projects necessitate

engineering reports. In this regard, so as to make clear that it is the *cost* of permits and architect's plans that must be considered, proposed Section 2188.65 (d) (3) (K) is amended as follows:

"Cost of permits and architects plans ~~Architect's plans, engineering reports and permits~~"

Further, based upon the realization that the type of attached garage be considered, proposed Section 2188.65 (d) (3) (M) is amended to add in the size and type of attached garage, and noticed (M) is now lettered (N) as follows:

"(M) Size and type of attached garage; and

(N) Additional costs associated with building a single or custom home."

Section 2188.65 (d) (6) did include a review of the California Standard Form Fire Policy and FAIR Plan coverages, as described in California Insurance Code sections 2071 and 10090, respectively, but did not include review of earthquake insurance coverages, including coverage offered by the CEA. In this regard, based upon comments, as so as to clarify that earthquake coverage is included, the text has been amended as follows:

"Review of the California Standard Form Fire Policy and FAIR Plan coverages, as described in California Insurance Code sections 2071 and 10090, respectively; review of earthquake insurance coverages as described in Insurance Code section 10081 et seq., including coverage offered by the CEA."

To assure that licensees and consumers have a clear understanding of the meaning of the terms replacement cost, replacement value, estimate of replacement cost and estimate of replacement value, the terms "construction cost(s)" and "estimate of construction cost" used in the originally noticed regulations, are removed from the proposed amended regulations. Construction cost(s) and estimate of construction cost described estimates that did not include all of the components of an "estimate of replacement cost" as required in Section 2695.183 (a) – (e). In this regard proposed Section 2695.182 (a) is amended to remove the reference. [It should be noted, as well, for the same reason the text has been amended in the following proposed sections to remove "construction cost(s)" and/or "estimate of construction cost(s)": 2190.3 (f), 2695.182 (b), 2695.183, 2695.183 (g) [noticed as subdivision (h)] and 2695.183 (h), 2695.183 (i).] Further, based upon comments, and with the goal of establishing clearly that the regulations create obligations for licensees when they prepare or "communicate" an estimate of replacement cost, only in those circumstances when the application or renewal is for a policy which provides coverage on a replacement cost basis, proposed Section 2695.182 (a) is amended to read:

"In the event an estimate of replacement cost ~~or any estimate of construction costs~~ is provided or communicated by a licensee to an applicant or insured in connection with an application for or renewal of a homeowners' insurance policy that provides coverage on a replacement cost basis, the licensee shall document and maintain in the applicant's or insured's file the following information:"

In consideration of comments, the proposed regulations are amended to clarify that the documentation to be maintained by licensees relates to the estimate of replacement value. Further, certain comments objected to the term “provide” as arguably establishing some sort of duty to communicate replacement cost estimates, which was not intended. In this regard, the proposed regulations are amended to reflect that the estimate is not necessarily “provided” but rather “prepared.” In this regard, proposed Section 2695.182 (a) (1) (2) and (3) are amended as follows:

“The status of the person ~~providing~~ preparing the estimate of replacement value, as the insurer underwriter or actuary or other person identified by the insurer, a broker-agent, a contractor, an architect, a real estate appraiser, or other person or entity permitted to make such an estimate by Insurance Code section 1749.85;

(2) The name, job title, address, telephone number, and license number, if applicable, of the person ~~providing~~ preparing the estimate of replacement value ~~or construction costs~~;

(3) The source from which or method by which ~~the estimate of replacement cost value or construction cost was determined~~ prepared, to include any replacement cost calculator, contractor’s estimate, architectural report, real estate appraisal, or other source or method; and

(4) A copy of any reports, inspection reports, contractor’s estimates, or other documents used to ~~prepare the estimate of replacement value or construction costs~~.

Comments were offered that it was onerous and unnecessary to have record-keeping requirements when an estimate of replacement cost is provided by a licensee to an applicant to whom an insurance policy is never issued. In consideration of these comments, the following proposed Sections 2190.2 (q), 2190.3 (f), 2695.182 (b) and 2695.183 (i) have been amended and to remove the record-keeping requirement in such circumstances.

Section 2190.2 (q) was added to the originally noticed regulations to refer to the record keeping requirements in the proposed Section 2695.182 and Section 2695.183. Similarly, proposed Section 2190.3 (f) was added to the originally noticed regulations, again, to refer to the record keeping requirements in proposed Section 2695.182 and Section 2695.183. These subsections have now been amended so as to acknowledge that the record keeping requirements as enunciated in amended proposed Section 2695.182 and Section 2695.183 no longer require record keeping when the policy is never issued, as follows:

Section 2190.2 (q): Any documents required to be maintained pursuant to Section 2695.182, except that documents to which the last sentence of Section 2695.182 applies must be maintained for the three-year period specified in that sentence or subdivision (i) of Section 2695.183.

Section 2190.3 (f): “An agent or broker who provides an estimate of replacement cost ~~or any estimate of construction costs~~ to an applicant or insured with respect to a policy of homeowner’s insurance shall maintain records and copies as mandated by Section 2695.182 and subdivision (i) of Section 2695.183.”

The amended proposed Section 2695.182 (b) makes clear the record keeping requirement [stated in proposed Section 2695.182 (a)] is limited. It applies to licensees who provide an estimate of replacement cost to either an insured or an applicant for insurance. It is limited to an application

for or renewal of a policy that provides coverage on a replacement cost basis, and does not require record retention when the applicant does not buy the insurance policy:

“In the event the estimate of replacement cost ~~or of construction costs~~ is provided by a licensee to an applicant or insured, in connection with an application for or renewal of a policy that provides coverage on a replacement cost basis, the licensee shall maintain in the insured’s file the records specified in subdivision (a) of this Section 2695.182 for the entire term of the insurance policy or the duration of coverage, whichever terminates later in time, and for five years thereafter. In the event the estimate of replacement cost ~~or of construction costs~~ is provided by a licensee to an applicant to whom an insurance policy is never issued, the licensee shall maintain in the applicant’s file the records specified in subdivision (a) of this Section 2695.182 for a period of three years following the time the estimate is generated shall not apply.”

To make clear that the proposed regulations do not establish a duty to obtain and maintain information or documents that would not, in the absence of the proposed regulations, come into the possession of a broker-agent in the ordinary course of business, proposed Section 2695.182 (c) is added as follows:

“Notwithstanding any other provision of this Section 2695.182, this section shall impose no duty upon a broker-agent to obtain from the insured and maintain any information or document that in the absence of this section would not come into the possession of the broker-agent in the ordinary course of business.”

Again, as with proposed Section 2696.182 (b), proposed Section 2695.183 (i) is amended to make clear the record keeping requirement is limited. It applies to licensees who provide an estimate of replacement cost, only, to either an insured or an applicant for insurance. It is limited to an application for or renewal of a policy that provides coverage on a replacement cost basis, and does not require record retention when the applicant does not buy the insurance policy. Additionally, language is added to proposed Section 2695.183 (i) to specifically address the length of time the records that are required to be retained, are maintained:

“Licensees shall maintain (1) a record of the information supplied by the applicant or insured that is used by the licensee to generate the estimate of replacement cost, ~~estimate or any construction cost estimate~~ and (2) a copy of any ~~replacement cost estimate and any construction cost estimate of replacement cost~~ supplied to the applicant or insured pursuant to subdivision (g) (1) or (h) of this Section 2695.183. If a policy is issued, these records and copies shall be maintained in the insured’s file for the entire term of the insurance policy or the duration of coverage, whichever terminates later in time, and for five years thereafter. However, if in the event the estimate of replacement cost is provided to an applicant to whom an insurance policy is never issued, the records and copies referred to in the first sentence of this subdivision (i) shall be maintained in the applicant’s file for a period of three years following the time the estimate is generated for the period of time the licensee ordinarily maintains applicant files in the normal course of business, provided that such period of time shall be at least sufficient to ensure that the licensee is able to comply with the provisions of this subdivision in the event the policy is issued to the applicant.”

Comments argued the noticed regulations were vague and unclear concerning the obligations of a licensee in estimating replacement value. Further, there was concern by those commenting that any reference to “set” or “recommend” placed a legal obligation on licensees that does not exist. In response to the comments, and to make clear that the regulations refer specifically to standards for estimates of replacement value communicated to applicants and insureds in connection with an application or renewal of a homeowners’ insurance policy that provides coverage on a replacement cost basis, proposed Section 2695.183 is amended as follows:

“Standards for ~~Replacement Cost~~ Estimates of Replacement Value and Other Construction Cost Estimates.

No licensee shall communicate an estimate of replacement cost, or shall rely on an estimate of replacement cost, to set or recommend a policy limit on a homeowners’ insurance policy for to an applicant or insured, in connection with an application for or renewal of a homeowners’ insurance policy that provides coverage on a replacement cost basis or to provide to the applicant or insured for his or her consideration unless the requirements and standards set forth in subdivisions (a) through (e) below are met:...”

In consideration of comments, so as to make more clear that the requirements in estimating replacement cost apply to the expenses which would be incurred in rebuilding the structure using like or equivalent construction, and that those required components must include at least what is referenced in the regulations, and not, as stated in the earlier version of the regulation, “but not limited to,” which the comments noted as being overbroad, Section 2695.183 (a) had been amended as follows:

“The estimate of replacement cost shall include ~~all the~~ the expenses that would reasonably be incurred to rebuild the insured structure(s) in its entirety, including ~~but not limited to~~ at least the following:...”

In consideration of comments, so as to make more clear the components and features to be considered when estimating replacement cost, proposed Section 2695.183 (a) is amended and re-structured. Subsection (a) now provides a list of five cost components to be considered. These components, though referenced in the restructured subdivision (a) are identical to the cost components referenced in the originally noticed regulations except for the following. The originally noticed proposed regulations 2695.183 required a consideration of: “Architect’s plans, engineering reports and permits, as well any other plans and reports reasonably necessary to effectuate a complete rebuilding of the structure...” As this component was considered to be overbroad, it has been revised and inserted under proposed Section 2695.183 (a) (4) as “Cost of permits and architect’s plans...”

Further, in the interests of clarity, 2695.183 (a) (5) has been amended. There remains a requirement that components and features of the insured structure be considered in estimating replacement cost, but the overbroad language that the estimate include “all other costs incident to construction” is removed from the proposed amended text.

The originally noticed regulations required that the estimate of replacement cost account for the “size of the entire structure...” This proposed Section 2695.183 (a) (5) (F) is amended to read:

“The square footage of the living space...”

The originally noticed regulations required that the estimate of replacement cost account for the materials used in, and types of, interior features and finishes. So as to make more clear the requirements and to give provide further information to licensees concerning their obligations, proposed Section 2695.183 (a) (5) (I) is amended to read:

“Materials used in, and generic types of, interior features and finishes, such as, where applicable, the type of heating and air conditioning system, walls, flooring, ceiling, fireplaces, kitchen, and bath(s)...”

Further, based upon the realization that the type of attached garage be considered, proposed Section 2188.65 (d) (3) (M) is amended to add in the size and type of attached garage, and noticed (M) is now lettered (N) as follows: “Size and type of attached garage...”

In this regard, as detailed above, proposed Section 2695.183 (a) is amended to read as follows:

“(1) Cost of labor, building materials and supplies;  
(2) Overhead and profit; ~~and~~  
(3) Cost of demolition and debris removal;  
(4) Cost of permits and architect’s plans; and  
(~~3~~) (5) Consideration of All components and features of the insured structure, as well as all other costs incident to reconstruction, including, but not limited to at least the following:  
(A) Type of foundation;  
(B) Type of frame;  
(C) Roofing materials and type of roof;  
(D) Siding materials and type of siding;  
(E) Whether the structure is located on a slope;  
(F) ~~Size of the entire structure and, separately, the~~ The square footage of the living space;  
(G) Geographic location of property;  
(H) Number of stories and any nonstandard wall heights;  
(I) Materials used in, and generic types of, interior features and finishes, such as, where applicable, the type of heating and air conditioning system, walls, flooring, ceiling, fireplaces, kitchen, and bath(s);  
(~~J~~) ~~Cost of demolition and debris removal;~~  
(~~K~~) ~~Architect’s plans, engineering reports and permits, as well any other plans and reports reasonably necessary to effectuate a complete rebuilding of the structure; and~~  
(~~L~~) (J) Age of the structure or the year it was built; and  
(K) Size and type of attached garage.”

So as to make clear that proposed Section 2695.183 (b) refers to an estimate of a replacement cost of *dwelling*s, specifically, it is amended as follows:

“The estimate of replacement cost shall be based on an estimate of the cost to rebuild or replace the structure taking into account the cost to reconstruct the single property being evaluated, as

compared to the cost to build multiple, or tract, ~~properties~~ dwellings.”

In consideration of comments that the regulations were unclear and onerous regarding the requirement that a licensee verify that the sources and methods used to estimate replacement cost proposed Section 2695.183 (e) is amended. The proposed amended regulation has removed any reference to setting or recommending a policy limit, as the comments argued that this language could be interpreted as establishing an obligation on the part of licensees to set or recommend policy limits, which is not the intent of the regulations. Further, the proposed subsection is amended to require that the licensee take reasonable steps to verify the sources no less frequently than annually and that the estimate shall be based on reasonable current sources and methods.

In this regard, proposed Section 2695.183 (e) is amended as follows:

~~“The A licensee that estimates replacement cost, or that relies upon an estimate of replacement cost produced by another, to set or recommend a policy limit on a homeowners’ insurance policy for an applicant or insured, or to provide to an applicant or insured for his or her consideration, shall no less frequently than annually take reasonable steps to verify that the sources and methods used to generate the estimate of replacement cost are kept current to reflect changes in the costs of reconstruction and rebuilding, including changes in labor, building materials, and supplies, based upon the geographic location of the insured structure. The estimate of replacement cost shall be created using such reasonably current sources and methods.”~~

There was concern as expressed in the comments that in order to properly estimate replacement cost, “demand surge” should be considered. Demand surge is a phenomenon characterized by a substantial increase in the cost of construction due to unusually high demand for contractors, building supplies and construction labor. Demand surge typically occurs after a disaster, such as a wildfire, earthquake, or other natural disaster. The originally noticed regulations prohibited licensees from considering demand surge in estimating replacement value. Thus, in consideration of comments that prohibiting “demand surge” in an estimate of replacement cost might limit the ability of the insured or applicant to purchase higher policy limits to account for demand surge, noticed Section 2695.183 (f) has been removed from the proposed regulations. The removed text is as follows:

~~“For purposes of this subdivision (f) “demand surge” is a phenomenon characterized by a substantial increase in the cost of construction due to unusually high demand for contractors, building supplies and construction labor. Demand surge typically occurs after a disaster, such as a wildfire, earthquake, or other natural disaster, in which large numbers of structures are destroyed within a specific geographic area. A replacement cost estimate or construction cost estimate generated by or on behalf of a licensee in connection with a homeowner’s insurance policy shall not include consideration for demand surge. The licensee shall disclose to the applicant or insured in the notice or report required under subdivision (h) of this Section 2695.183 the fact that the demand surge has not been, and cannot legally be, taken into account in formulating the estimate. However, nothing in this article shall be interpreted to forbid a licensee from making known to an applicant or insured any coverage options that may be available for obtaining insurance to protect against the contingency of demand surge.”~~

The text of the noticed Section 2695.183 (g) is moved to Section 2695.183 (f).

There were comments offered that oftentimes broker-agents, when estimating replacement cost, are required by insurers to use tools, including software programs, provided by the insurance carriers writing the policies. So as to make more clear that although the provisions are binding upon licensees, notwithstanding the fact that information, data or statistical methods used or relied upon by a licensee to estimate replacement cost may be obtained through a third party source, the amended text in subdivision (f), referring to subdivision (k), demonstrates that there is an exception in circumstances when insurers require that a broker-agent utilize a specific source or tool to create an estimate of replacement cost.

“(f) ~~(g)~~ Except as provided in subdivision (k) of this Section 2695.183, ~~the~~ provisions of this article are binding upon licensees, notwithstanding the fact that information, data or statistical methods used or relied upon by a licensee to estimate replacement cost may be obtained through a third party source. Any and all information received by the Department pursuant to this article shall be accorded the degree of confidential treatment required by section 735.5 of the Insurance Code or Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code, commencing at section 11180.”

There were comments that the noticed regulations did not delineate the extent of the obligation on licensees to provide copies of replacement cost estimates to applicants and insureds. The comments noted that oftentimes replacement cost estimates are communicated telephonically. In this regard, proposed Section 2695.183 (g) (1) is amended.

Initially, the word “communicates” is used rather than “uses” to make clear, again, that the regulations apply to communications to an applicant or insured. Further, as noted above in other circumstances, the terms “set” and “recommend” have been removed, as these terms led to comments that the regulations were establishing an obligation on the part of licensees to set or recommend policy limits, which is not the case. The amended language provides that the communication must be related to a policy that provides coverage on a replacement cost basis, and not other policy types. As noted above, the reference to “construction cost” is removed, as well. The amended proposed regulation contains new language stating specifically that if an estimate of replacement cost is communicated to an applicant and the licensee determines an insurance policy shall not be issued, then the licensee is not required to provide a copy of the estimate. Further, the new language provides that if the estimate is communicated telephonically to an insured, the copy shall be mailed no later than three business days after the time of the telephone conversation. Finally, if an estimate is communicated by telephone to an applicant, the copy of the estimate shall be mailed no later than three business days after the applicant agrees to purchase the coverage. Proposed Section 2695.183 (g) (1) [noticed as subdivision (h)] is amended, then, as follows:

“(g)(1) ~~(h)~~ If a licensee communicates ~~uses~~ an estimate of replacement cost ~~or construction costs~~ to set, recommend or communicate about a policy limit on a homeowners’ insurance policy for ~~to an applicant or insured,~~ in connection with an application for or renewal of a homeowners’ insurance policy that provides coverage on a replacement cost basis, the licensee must provide a copy of the estimate of replacement cost ~~estimate or construction cost estimate~~ to the applicant or insured at the time the estimate is communicated. ~~policy limit is set, recommended or is~~

~~otherwise the subject of communication by the licensee. However, in the event the estimate of replacement cost is communicated by a licensee to an applicant to whom the licensee determines an insurance policy shall not be issued, then the licensee is not required pursuant to the preceding sentence to provide a copy of the estimate of replacement cost. In the event the estimate of replacement cost is communicated by telephone to an insured, the copy of the estimate shall be mailed to the insured no later than three business days after the time of the telephone conversation. In the event the estimate of replacement cost is communicated by telephone to an applicant, the copy of the estimate shall be mailed to the applicant no later than three business days after the applicant agrees to purchase the coverage. If the estimate of replacement cost or construction costs is updated or changed by, or on behalf of, the licensee, the licensee shall provide a copy of the revised estimate of replacement cost to the applicant or insured within sixty (60) calendar days from the time the estimate is generated. The~~

Pursuant to the proposed regulations an estimate of replacement cost must itemize the projected cost of components and features specified in proposed Section 2695.183 (a). Proposed Section 2695.183 (g) (2) [noticed as subdivision (h)] is amended to reflect the changes and restructuring of proposed Section 2695.183 (a) and to specify more precisely that the itemization is related to a homeowners' insurance policy that provides coverage on a replacement cost basis and that the requirement is as to the projected cost. Proposed amended Section 2695.183 (g) (2) [noticed as subdivision (h)] is amended, then, to read as follows:

“An estimate of replacement cost ~~or construction costs~~ provided in connection with an application for or renewal of a homeowners' insurance policy that provides coverage on a replacement cost basis must itemize the projected cost for each element specified in paragraphs ~~subdivision~~ (a)(1) through (a)(4), and shall identify the assumptions made for each of the relevant components and features listed in paragraph (a)(5), of this Section 2695.183.”

Clarification was needed concerning circumstances when a licensee revises an estimate of replacement cost and communicated it to an applicant or insured. In this regard, proposed newly amended Section 2695.183 (h) now requires that the licensee comply with proposes amended Section 2695.183 (g) (1) or provide the estimate simultaneously with the renewal offer. Further, this subdivision shall not apply to updates or revisions solely from the application of an inflationary provision in the policy, itself, or an inflation factor applied at renewal. As important, the amended language states that the subdivision does not obligate a licensee to recalculate an estimate of replacement cost annually. In this regard, in keeping with the effort to make clear the obligations of licensees, proposed Section 2695.183 (h) is amended as follows:

(h) If an estimate of replacement cost is updated or revised by, or on behalf of, the licensee and the revised estimate of replacement cost is communicated to the applicant or insured in connection with an offer of renewal of a homeowners' insurance policy that provides coverage on a replacement cost basis, the licensee shall provide a copy of the revised or updated estimate of replacement cost to the applicant as provided in paragraph (g) (1) of this Section 2695.183, or to the insured simultaneously with the renewal offer, as the case may be. This subdivision (h) shall not apply when the update or revision to the estimate of replacement cost or the policy limit results solely from the application of an inflationary provision in a policy or an inflation factor. This subdivision (h) shall not obligate a licensee to recalculate an estimate of replacement cost

on an annual basis.”

The Department received comments that the regulations were unclear as to what would be considered a misleading statement under Insurance Code Section 790.03. The comments implied that the regulations were establishing an obligation on the part of licensees to set or recommend policy limits, which is not the case. The comments also implied that merely using the words “replace” or replacement” in a conversation with an applicant or insured would limit the ability of a licensee to have a conversation with an applicant or insured without exposing the licensee to liability for making a misleading statement. In this regard, Section 2695.183 (j) has been amended so as to remove reference to the terms “setting” and “recommending” define more clearly and specifically the obligation to communicate an estimate that comports with 2695.183 (a) through (e) [these subdivisions specify with particularity those features and components to be considered when estimating replacement value] as follows:

“To communicate an estimate of replacement value not comporting with subdivisions (a) through (e) of this Section 2695.183 to an applicant or insured in connection with an application for or renewal of a homeowners’ insurance policy that provides coverage on a replacement cost basis constitutes making a statement with respect to the business of insurance which is misleading and which by the exercise of reasonable care should be known to be misleading, pursuant to Insurance Code section 790.03.

~~When setting, recommending or communicating about a policy limit on a homeowners’ insurance policy, to characterize using any form of the word “replace” or “replacement” any estimate of construction costs not comporting with subdivisions (a) through (e) of this Section 2695.183 constitutes making a statement with respect to the business of insurance which is misleading and which by the exercise of reasonable care should be known to be misleading, pursuant to Insurance Code section 790.03. Notwithstanding the preceding sentence, a licensee that provides an applicant or insured with any estimate of construction costs that does not satisfy all of the requirements of subdivisions (a) through (e) of this Section 2695.183 shall indicate that it is not an estimate of replacement cost and shall identify and explain in the estimate each of the ways in which the estimate of construction costs that is provided fails to meet the requirements for a replacement cost estimate that are stated in said subdivisions (a) through (e).”~~

The Department received comments that when an insurer requires that a broker-agent utilize a specific source or tool to create an estimate of replacement cost, that the insurer shall provide written procedures and written training materials. In this regard, Section 2695.183 (k) has been amended to make this suggested change. Additionally, non-substantive changes have been made to this section to remove the term “construction costs” and to change the reference to subdivisions (a) through (f) to (a) through (e) in keeping with the re-lettering referenced above:

~~“When an insurer requires that a broker agent utilize~~ identifies a one or more specific sources or tools that a broker agent must use to create an estimate of replacement cost ~~or construction costs,~~

(1) the insurer shall prescribe complete written procedures to be followed by broker-agents when they use the sources or tools,

(2) the insurer shall provide the broker-agent with the training ~~or~~ and written training materials necessary to properly utilize the sources or tools according to the insurer’s prescribed procedures, and

(3) the insurer, and not the broker-agent, shall be responsible for any noncompliance with ~~the provisions subdivisions (a) through (f) of this Section 2695.183~~ that results from the failure of the estimate to satisfy the requirements of subdivisions (a) through (e), unless that noncompliance results from failure by the broker-agent to follow the insurer's prescribed written procedures when using the source or tool."

The Department received comments that the regulations were establishing new legal obligations on licensees in violation of California case law and in contradiction to statutory law. Further comments stated that the regulations were, in essence, illegal underwriting requirements. So as to make clear that this is not the intent of the regulations and in consideration of the comments, proposed Section 2695.183 (m) is amended to state specifically that nothing in the article may be construed as requiring a licensee to prepare, communicate or use an estimate of replacement cost as follows:

"No provision of this article shall be construed as requiring a licensee to estimate replacement cost or to set, or recommend a policy limit to an applicant or insured, a policy limit on a homeowners' insurance policy. No provision of this article shall be construed as requiring a licensee to advise the applicant or insured as to the sufficiency of such an estimate of replacement cost."

Further, in consideration of the comments that the proposed regulations are in conflict with California statutory law and somehow would limit a licensee's communication about the California Residential Property Insurance Disclosure, the proposed regulations are amended to add Section 2695.183 (n) as follows:

"No provision of this article shall limit or preclude a licensee from providing and explaining the California Residential Property Insurance Disclosure, as cited in Insurance Code section 10102, explaining the various forms of replacement cost coverage available to an applicant or insured, or explaining how replacement cost basis policies operate to pay claims."

In response to comments that the noticed regulations prevented an applicant or insured from obtaining his or her own estimate of replacement cost, the regulations are amended to add Section 2695.183 (o) as follows:

"No provision of this article shall limit or preclude an applicant or insured from obtaining his or her own estimate of replacement cost from an entity permitted to make such an estimate by Insurance Code section 1749.85."

In response to comments that the noticed regulations illegally mandate underwriting guidelines and interfere with licensees' rights in determining their own eligibility guidelines and minimum policy limits in writing homeowners' insurance policies, the proposed regulations are amended to add Section 2695.183 (p) as follows:

"For purposes of this subdivision (p), "minimum amount of insurance" shall mean the lowest amount of insurance that an insurer requires to be purchased in order for the insurer to underwrite the coverage on a particular property, based upon an insurer's eligibility guidelines,

underwriting practices and/or actuarial analysis. An insurer may communicate to an applicant or insured that an applicant or insured must purchase a minimum amount of insurance that does not comport with subdivisions (a) through (e) of this Section 2695.183; however, if the minimum amount of insurance that is communicated is based in whole or in part on an estimate of the replacement value, the estimate of replacement value shall also be provided to the applicant or insured and shall comply with all applicable provisions of this article. Nothing in this article shall limit or preclude an insurer from agreeing to provide coverage for a policy limit that is greater than or less than an estimate of replacement cost provided pursuant to this article. “

In response to comments regarding the applicability date of the regulations, the regulations have been amended to add Section 2695.183 (q) as follows:

“This article shall apply only to estimates of replacement value that are prepared, communicated or used by a licensee on or after the day that is one hundred eighty (180) calendar days after filing with the Secretary of State.”

#### **UPDATE OF MATERIAL RELIED UPON**

These documents have been added to the Rulemaking File pursuant to the 15 Day Notice:

1. Transcript of Proceedings before the Department of Insurance May 17, 2010
2. NAMIC PADIC comment letter May 11, 2010
3. United Policyholders comment letter May 17, 2010
4. PIFC comment letter May 17, 2010
5. IBA West comment letter May 17, 2010
6. Automobile Club of Southern California comment letter May 17, 2010
7. ACIC comment letter May 17, 2010
8. Insurance Agents and Brokers Association of California comment pleading May 17, 2010
9. Insurance Trade Association, Alliance of Insurance Agents and Brokers, Association of California Insurance Companies, Insurance Agents and Brokers Association of California, National Association of Mutual Insurance Companies, Pacific Association of Domestic Insurance Companies, Personal Insurance Federation of California, Western Insurance Agents Association letter of June 18, 2010 of August 27, 2010
10. Notice of Availability of Change Text and of Addition of Material to Rulemaking File
11. Amended Text of Regulation, October 27, 2010
12. Declaration of Mailing
13. United Policyholders Survey 2007 Wildfire Victims
14. Marshall Swift Beck Estimate screenshot (redacted)
15. AccuCoverage Website screen shot views
16. Union Tribune Article: *Fighting off Fraud After the Disaster*, November 3, 2007
17. Orange County Register article: *Living Under a Risky Roof*, 2007-11-04
18. North County Times article: *Wildfire Pace Aims to Reduce Losses*, November 12, 2007

19. NY Times article: *After Fires, Homeowners Feel an Insurance Pinch*, November 13, 2007
20. North County Times article: *Financial Impact of Rice Canyon Fire Coming into Focus*, November 11, 2007
21. Insurance Journal article: *Survey: 96 Million Households Lack Knowledge on Protecting Electronics*, November 20, 2007
22. Risk and Insurance article: *Burning Through Limits*, December 1, 2007  
Union Tribune article: *Burned-out Homeowners Begin Insurance Process*, November 29, 2007
23. Union Tribune article: *Homeowners Express Concerns Over Insurance*, November 30, 2007
24. North County Times article: *Insurance Commissioner Offers Advice to Fire Victims*, November 30, 2007
25. North County Times article: *Insurance Means More Than Just Paying Premiums*, December 4, 2007
26. Union Tribune article: *Funding Stalled after Wildfires*, December 13, 2007
27. CNN Money article: *Burned out: Recovering From a Fire*, December 12, 2007
28. North County Times article: *Victims of 2003 California Wildfires Lend Their Expertise to the Latest Burned-out Homeowners*, December 14, 2007
29. Malibu Times article: *State Insurance Commissioner Talks to Fire Victims*, December 19, 2007
30. North County Times article: *Keep Your Insurance Up to Date for 2008*, December 27, 2007
31. North County Times article: *Deadline Approaching for Fire Assistance*, January 3, 2008
32. Ventura County Star article: *Area Wildfires Illustrate Need for Adequate Home Insurance*, January 6, 2008
33. L.A. Times article: *Houses Slid Down, Not Hope*, January 5, 2008
34. Klipinger article: *Burned out in the California Hills*, February 2008
35. Insurance Journal article: *Southern California Wildfire Losses Could Reach More than \$2 Billion*, January 11, 2008
36. Union Tribune article: *Companies, Underinsured Homeowners Still in Dispute over Settlements Stemming from 2007 Wildfires*, October 12, 2008
37. North County Times article: *Region: Rebuilding Slow in Fire-ravaged Areas*, October 22, 2008
38. L.A. Times article: *A Year Later, Victims Say Carriers Misled Them*, October 23, 2008
39. North County Times article: *Region: Wildfire Victims Demand Help Fighting Insurance Companies*, October 23, 2008
40. Insurance Journal article: *Californians Take Responsibility for Underinsurance*, October 23, 2008
41. San Diego Newstips: *Many Struggle to Rebuild After Last Year's Wildfires*, October 23, 2008
42. L.A. Times article: *Hot Zone*, October 26, 2008
43. Associated Press report: *Victims of San Diego Fires Criticize Insurers*, October 24, 2008

44. L.A. Times article: *Wildfire Victims Burned Again When Coverage Comes Up Short*, November 19, 2008
45. Insurance Journal article: *California Commissioner Declares Insurance Emergency to Expedite Fire Claims Processing*, November 17, 2008
46. Claims article: *Wildfires Add to Catastrophe Counts*, November 18, 2008
47. Insurance Journal article: *Study: SoCal Fires Strike Those Who Often Reject Insurance*, November 21, 2008
48. KCOY report: *November Wildfire Victims Have 30 Days to Register for Federal-State Assistance*, December 18, 2008
49. Insurance Journal article: *California Hosts Insurance Recovery Forum for Wildfire Survivors*, January 9, 2009
50. Napa Valley Register article: *Home Insurance in Wildfire Country*, March 14, 2009
51. Sacramento Bee article: *Agencies Scramble to Meet Rural Residents' Need for Fire Insurance Inspections*, May 29, 2009

#### **MANDATE UPON LOCAL AGENCIES AND SCHOOL DISTRICTS**

The Department has determined that the proposed regulations will not impose a mandate upon local agencies or school districts.

#### **ALTERNATIVES**

The Commissioner has determined that there are no alternatives that would be more effective, or as effective and less burdensome to affected persons, than the proposed regulations.

**SUMMARY OF AND RESPONSE TO COMMENTS**

Committer	Synopsis or Verbatim Text of Comment	Response
<p><b>United Policyholders May 17, 2010 written comments</b></p>	<p>UP participated in hearings and an investigation following a 1991 firestorm in Northern California that resulted in an historic fine issued against Allstate Insurance Company and agent Charles Strahan for systematically underinsuring homes in the Oakland/Berkeley hills. We testified again at CDI fact-finding hearings after 2003 wildfires in Southern California. UP has an entire section of our website devoted to "<a href="#">Underinsurance Help</a>". We publish consumer tips and newsletter articles on the topic, ("Underinsurance rears its ugly head again...and again"), and have written articles to call attention to the problem that have been published in national media. We have supported legislation to remedy the problem, we've filed <del>friend of the court briefs</del> to advocate for solutions to the problem. We've participated in three rounds of legislative drafting sessions to select the wording of the California Residential Property Insurance Disclosure form mandated in Insurance Code section 10102, (the "Petris" disclosure). We've conducted consumer surveys to document the extent of the problem, and we've created an entire program; the UP Roadmap to Preparedness Program to do outreach and education throughout the State of California on the importance of insuring to value and not blindly trusting insurance sales agents to set limits correctly. At CDI hearings in 2004, Marshall/Swift/Boeckh executives defended their continued promotion of replacement cost valuation software that spit out inadequate estimates when used in a hurry or by untrained people or people with insufficient information about the property to be insured. They insisted that the software is not defective but acknowledged that users need to spend enough time inputting data or it will not work properly. At the time, insurance executives promised to discontinue the use of the M/S/B "Quick Quote" software, tacitly acknowledging that accurate estimates take time. It is our understanding that</p>	<p><b>Response to United Policyholders May 17, 2010 written comments:</b></p> <p>(1) The three-hour course was determined by the Curriculum Board's (Section 1749.1 of the California Insurance Code ("Insurance Code")) Senate Bill (SB) 2 subcommittee which met on several occasions to establish the topics to be included in the homeowners' insurance valuation training. During these meetings the SB 2 subcommittee reviewed the topics and identified the amount of time necessary to provide adequate instruction for each topic listed in Section 2188.65 (d) and (e). As stated on the Homeowners' Insurance Valuation Outline, which is available on the Department's Web site, the specific amount for each topic equals the three hours for this course.</p> <p>(2) The Department of Insurance does have sufficient resources.</p> <p>(3) This section deals specifically with the training required of producers and does not address the issue of the duty of insurers to provide this information to their sales representatives.</p> <p>(4) In consideration of the comment, the Department has amended proposed Section 2188.65 (d) (6) to include CEA policies.</p> <p>(5) The Department concurs that the section is important. The Department is not taking a position on who is best equipped to provide estimates of replacement cost, only that certain factors be taken into consideration when the estimates are made.</p> <p>(6) In consideration of this comment and others the Department has amended proposed Section 2695.183 (h) and re-lettered it to subdivision (g) so as to make more clear the obligations. If a licensee communicates an estimate of replacement cost to an applicant, the licensee shall provide a copy of the estimate to an applicant. If the estimate is communicated by telephone to an insured, a copy of the estimate shall be mailed to the insured no later than three business days after the conversation. If the estimate is communicated by telephone to an applicant, the</p>

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	<p>M/S/B continues to be the hands-down market leader in providing the software that most insurers requires agents to use at the point of sale. UP has tested Accucoverage, the consumer version of M/S/B's home replacement cost estimating software, and it is clear that amount of time spent by the user, the user's familiarity with residential building components and construction lingo, and the extent of information available to the user about the property to be insured are essential to getting a reasonably accurate result. Although UP does not have access to the commercial versions of M/S/B software used by insurers/agents/brokers, we assume the same holds true: For the software to produce accurate results, the user must:</p> <ul style="list-style-type: none"> <li>- Be trained to use it properly</li> <li>- Be knowledgeable about building components</li> <li>- Have access to detailed information about the structure to be insured from a source such as <a href="http://www.zillow.com">www.zillow.com</a></li> </ul> <p>But training and familiarity with replacement cost estimating software is only one aspect of being competent to perform the important duties of an insurance sales agent or broker. An understanding of homeowners insurance, endorsements, provisions and the significance of policy language is equally critical. The proposed regulations cover both bases.</p> <p>Specific Comments  Adopt Section 2188.65. Broker-agent Training on Estimating Replacement Value.  (b) On and after the day that is ninety days after the effective date of this section, every California resident fire and casualty broker-agent and personal lines broker-agent must satisfactorily complete one three-hour training course on homeowners' insurance valuation prior to soliciting individual consumers in order to sell dwelling fire or homeowners' insurance. For resident broker-agents, this requirement shall be</p>	<p>licensee shall mail to the applicant a copy of the estimate no later than three days after the applicant agrees to purchase the coverage.</p> <p>(7) The Department agrees with the comment.  (8) The regulation's purpose is to assure that when "replacement cost" is estimated, specific characteristics and components are considered. It does not require that a licensee set or recommend replacement cost. Should a licensee voluntarily undertake this duty, then California law regarding the obligations inherent in that duty would apply.</p>

Commenter	Synopsis or Verbatim Text of Comment	Response
	<p>part of, and not in addition to, the continuing education requirements of Insurance Code section 1749.3.</p> <p><b>(1) Comment: We recommend a series of at least two three hour trainings spaced at least three months apart.</b></p> <p>(c) The training required by this section must be approved by the commissioner and shall consist of topics related to dwelling, fire, and homeowners' insurance. Any course taken to satisfy the requirements stated in Section 1749.85 of Insurance Code shall use subject matter described in this article.</p> <p><b>(2) Comment: If CDI does not have sufficient resources to review and approve curriculum the first sentence of this section should be deleted.</b></p> <p>(d) The broker-agent shall be trained on the differences between homeowners' insurance coverage and other Fire, and Dwelling Property policies, which differences may necessitate differences in coverage or coverage levels. The broker-agent shall also be trained on the basic concepts of property insurance and estimating replacement value, which includes: ... (4) The effects of catastrophes on replacement cost. This includes how shortages of construction labor, building supplies, fuel, transportation issues, and permit restrictions can result in increased costs, sometimes referred to as demand surge, and delays in rebuilding.</p> <p><b>(3) Comment: Insurers should be specifically charged with the duty to provide this information to their sales representatives.</b></p> <p>(5) Review of the significant enhancements and endorsements to the homeowners' insurance policy, and identify of coverages that help protect against underinsurance. The review is to include:</p> <p>(A) what is included and excluded in Building Code Upgrade (Ordinance and Law) Coverage, as defined in California Insurance Code section 10102; and</p> <p>(B) the various types and levels of replacement cost, as defined</p>	

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	<p>in California Insurance Code section 10102;</p> <p>(6) Review of the California Standard Form Fire Policy and FAIR Plan coverages, as described in California Insurance Code sections 2071 and 10090, respectively.</p> <p>(4) <b>Comment: Add "CEA" policies</b></p> <p>Adopt Section 2695.181. Standards for Real Estate Appraisers. Subdivision (d) of Insurance Code 1749.85 provides that if the Department of Insurance, by adopting a regulation, establishes standards for the calculation of estimates of replacement value of a structure by appraisers, then on and after the effective date of the regulation a real estate appraiser's estimate of replacement cost shall be calculated in accordance with the regulation. A real estate appraiser, whether or not a licensee, shall not estimate the replacement cost of a structure for use in connection with a homeowner's insurance policy unless the estimate of replacement cost complies with the provisions of subdivisions (a) through (e) of Section 2695.183. Appropriate licensure by the Department of Insurance is required in order to lawfully explain levels of coverage under a homeowners' insurance policy. NOTE: Authority cited: Sections 35, 1631, 1633, 1749.7, 1749.85, and 2051.5, Insurance Code. Reference: Sections 35, 1631, 1633, 1625, 1625.5, 1749.85, 2051.5, and 10087, Insurance Code. (5) <b>Comment: This section is critically important. In our view, replacement cost appraisals by disinterested, regulated third party professionals (e.g. Castle Home Inspection Service) are an excellent way of solving the underinsurance problem if they can be done economically.</b></p> <p>Adopt Section 2695.183</p> <p>(h) If a licensee uses an estimate of replacement cost or construction costs to set, recommend or communicate about a policy limit on a homeowners' insurance policy for an applicant or insured, the licensee must provide a copy of the replacement cost estimate or construction cost estimate to the applicant or insured at the time the policy limit is set.</p>	

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	<p>recommended or is otherwise the subject of communication by the licensee. If the estimate of replacement cost or construction costs is updated or changed by, or on behalf of, the licensee, the licensee shall provide a copy of the revised estimate of replacement cost to the applicant or insured within sixty (60) calendar days from the time the estimate is generated. The estimate of replacement cost or construction costs must itemize each element specified in subdivision (a) of this Section 2695.183. (6) <b>Comment: We support the above provision but suggest eliminating the last sentence to avoid complication.</b></p> <p>(k) When an insurer requires that a broker-agent utilize a specific source or tool to create an estimate of replacement cost or construction costs,</p> <p>(1) the insurer shall prescribe procedures to be followed by broker-agents when they use the source or tool,</p> <p>(2) the insurer shall provide the broker-agent with the training or training materials necessary to properly utilize the source or tool according to the insurer's prescribed procedures, and</p> <p>(3) the insurer, and not the broker-agent, shall be responsible for any noncompliance with the provisions subdivisions (a) through (f) of this Section 2695.183, unless that noncompliance results from failure by the broker-agent to follow the insurer's prescribed procedures when using the source or tool. (7) <b>Comment: UP strong supports this section. Insurers must be held responsible for failing to give their sales representatives adequate training and support.</b></p> <p>(f) This Section 2695.183 applies to all communications by a licensee, verbal or written, with the sole exception of internal communications within an insurer, or confidential communications between an insurer and its contractor, that concern the insurer's underwriting decisions and that never come to the attention of an applicant or insured.</p> <p>(m) No provision of this article shall be construed as requiring</p>	

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<p><b>National Association of Mutual Insurance Companies (NAMIC) and the Pacific Association of Domestic Insurance Companies (PADIC)</b>  <b>May 11, 2010</b>  <b>written comments</b></p>	<p>a licensee to estimate replacement cost to set, or recommend to an applicant or insured, a policy limit on a homeowners' insurance policy. No provision of this article shall be construed as requiring a licensee to advise the applicant or insured as to the sufficiency of such an estimate. (8)</p> <p><b>Comment: United Policyholders recommends that the above section be amended to comport with California law to the effect that: An insurer or licensee that represents him or herself through actions or words as taking responsibility for setting policy limits assumes a duty to do so accurately.</b></p> <p>Both the National Association of Mutual Insurance Companies (NAMIC) and the Pacific Association of Domestic Insurance Companies (PADIC) appreciate the opportunity to respond to your notice contemplating proposed amendments to the regulations concerning Standards and Training for Replacement Value on Homeowners' Insurance. PADIC member companies write approximately \$1 billion in property and Casualty premium almost exclusively in California. Because the vast majority of PADIC insurance business is written in California, insurance regulation has a much greater impact on our members and, more importantly, our policyholders than companies who write insurance throughout the country. Approximately one half of the premium written by PADIC is in personal lines, including homeowners insurance.</p> <p>NAMIC is a full-service national trade association with more than 1,400 member companies that underwrite 43 percent (\$196 billion) of the property and casualty insurance premium in the United States. NAMIC membership includes four of the seven largest property and casualty insurance carriers in the nation, and every size regional, national and state specific property and casualty insurer, including hundreds of farm mutual insurance companies. NAMIC has 106 member insurance carriers</p>	<p><b>Response to National Association of Mutual Insurance Companies (NAMIC) and the Pacific Association of Domestic Insurance Companies (PADIC) May 11, 2010</b></p> <p><b>written comments:</b></p> <p>(1) This comment is not directed toward a specific section of the regulation and instead argues that the Department has not complied with the necessity requirement as enunciated in Government Code Section 11349 (a). NAMIC and PADIC have made this assertion although neither has asked to nor in fact reviewed the Rulemaking file. The Rulemaking file is replete with more than fifty separate consumer complaints and their files related to underinsurance and replacement cost; testimony at an investigative hearing held by the insurance commissioner on the same issues; declaration and summaries of market conduct examinations on these issues; the 2007 Wildfire Insurance Claim Status Survey/United Policyholders. Pursuant to the 15 Day Notice, the following has been added to the rulemaking file, further evidencing the need for the regulations: MBS report and website information on replacement cost issues; multiple media reports throughout several years reporting on the underinsurance problem from the Orange County Register; the North County Times; Sign On, the Union Tribune, the New York Times, The Insurance Journal, CNN Money, the Associated Press, the Malibu Times, the Ventura</p>

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	<p>writing business in the state of California who write approximately 23% of the property and casualty insurance business in the state.</p> <p>Both NAMIC and PADIC oppose the implementation of these proposed amendments because: (a) they do not comply with procedural and substantive requirements of the Administrative Procedures Act (APA), Government Code Section 11349.1; (b) the proposed amendments improperly attempt to either add a new prohibition to the California Insurance Code, section 790 et seq., the Unfair Practices Act (Act), or implement the current Act in a way that is inconsistent with the language and intent of a regulation pertaining to deceptive and misleading insurance practices; c) the contemplated regulatory changes improperly subject insurers to Unfair Practices Act liability exposure for merely complying with the insurer's contractual and regulatory duty to communicate with the policyholder about the consumer's insurance options and the terms/conditions of the policy; and d) the proposed amendments are likely to confuse not enlighten insurance consumers as to the issue of properly selecting appropriate homeowners' insurance coverage limits and endorsements. Section I of these written comments address the above referenced concerns stated in points a), b) and c) of the introductory paragraph and Section II of these written comments address point d) of the introductory paragraph.</p> <p>I. The proposed regulation does not comply with Government Code Section 11349.1</p> <p>Any regulatory act a state agency adopts through the exercise of a quasi-legislative power delegated to the agency by statute is subject to the APA unless statutorily exempted or excluded. (Gov. Code, Sec. 11346). Since no exemption applies in this instance, the proposed regulatory actions of the California Department of Insurance (CDI) must be in compliance with the "necessity, authority, clarity, consistency, reference and non-duplication standards" set forth in Government Code</p>	<p>County Star, the Los Angeles Times, Kiplinger, Claims, KCOY 12, the Napa Valley Register, the Sacramento Bee. It is clear that the regulations are necessary. In 2003, and again in 2007 and 2008 California has experienced significant wildfires leading to the loss of a high number of residential structures. After each of these fires, fire survivors complained about problems including their experience that after the fire they learned that the replacement value estimates made in setting coverage limits for their homes were incomplete or too low, causing underinsurance issues to arise during efforts to rebuild or replace their residences. The significance of the replacement value estimate being complete, which results in the estimate being more accurate, is particularly important given that other than a limited number of homeowners who qualify for guaranteed replacement coverage offered by only a small number of insurers, the vast majority of homeowners have one of three kinds of insurance coverage on their home as defined in the California Residential Property Insurance Disclosure Form from Insurance Code Section 10102:</p> <p><u>Limited Replacement Cost Coverage With an Additional Percentage</u> which pays replacement costs up to a specified amount above the policy limit;</p> <p><u>Limited Replacement Cost Coverage With No Additional Percentage</u> which pays replacement costs up to policy limit only;</p> <p><u>Actual Cash Value Coverage</u> which pays the fair market value of the dwelling at the time of the loss, or the cost to repair, rebuild, or replace the damaged or destroyed dwelling with like kind and quality construction up to the policy limit.</p> <p>Therefore, the necessity of having a more accurate estimated replacement value that is based upon complete, current, validated information is paramount. The failure to take into consideration certain factors at all, or to not fully consider other components, as referenced above, is one source of the underinsurance problem. The comment indicates that there has</p>

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	<p>Section 11349.1(a). NAMIC and PADIC contend that the proposed amendments to Subsection 7.5 of Chapter 5 of Title 10 of the Insurance Code fail the “necessity”, “authority”, and “clarity” requirements necessary for the proposed amendments to be approved by the Office of Administrative Law (OAL). (1) A. The CDI has failed to demonstrate that the proposed changes to the Insurance Code are “necessary” to effectuate the CDI’s stated purpose for the regulation</p> <p>Pursuant to Government Code Section 11349 (a), “Necessity means that 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.” [emphasis added].</p> <p>NAMIC and PADIC do not believe that the CDI has demonstrated with <i>substantial evidence</i> that there is a problem in the California insurance marketplace of consumers being unknowingly and/or unintentionally underinsured in the replacement cost of their homes, and/or that consumers are currently unable to accurately determine their own personal homeowners’ insurance coverage needs. Requiring all insurance consumers to pay the cost of solving an unproven problem, one that may only impact a very small percentage of insurance consumers, is unwise, especially in a weak economy where small businesses and insurance consumers are struggling to make ends meet.</p> <p>In the Summary of Existing Law and Policy Statement Overview section of the CDI’s Notice of Proposed Action, the CDI states, “[t]he Department and the California Legislature received a <i>significant number of complaints</i> by homeowners who lost their residences in the Southern California wildfires . . .” [emphasis added]</p>	<p>been no showing that the underinsurance occurred because the homeowner was unaware of their coverage needs. The regulations are not based on whether one is underinsured because one is unaware of his insurance needs, but rather that if the term “replacement cost” is used by a licensee in defining what has been estimated, it must assure that the components listed in the regulation are considered in the estimate. If a homeowner chooses to be underinsured, there is nothing in the regulation that prohibits it. The comment states that the Department of Insurance has sufficient regulatory power without the regulations and states that the market conduct mechanisms in place are available to address the issue. The comment provides no facts upon which to base the assertion that the whole system will be fundamentally changed. Market conduct examinations evaluate whether insurers are complying with the law. The regulations establish that there are requirements to be followed when estimating “replacement cost;” that certain training will be necessary; and that record keeping will be required. The regulations work hand in hand with the market conduct examinations and are neither a replacement for nor a duplication of other regulatory authority. The comment asserts that the Department has not established that insurers have engaged in any unfair or deceptive practices that lead homeowners’ insurance policyholders to be underinsured. The consumer complaints made to the Department, which are contained in the rulemaking file, include substantial evidence that licensees did not include components necessary to estimate replacement cost, misleading consumers into thinking that a replacement cost estimate was an estimate of what it would cost to completely replace the consumer’s house, when in fact, it was not. The comment states that it is not reasonable to conclude that insurance carriers have not been complying with their duty to provide the state mandated California Residential Property Insurance Disclosures. The Residential Property Disclosure requirement of Insurance Code</p>

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	<p>It is interesting to note that the CDI has failed to offer any data to support their contention that the CDI has received a “significant number of complaints” from homeowners. Further, the CDI has failed to tender any evidence to support the conclusion that a significant number of insurance consumers involved in the wildfires were actually underinsured, or if they were underinsured, it was because they were unaware of their homeowners’ insurance coverage needs. If the CDI has actual complaints against specific companies, the CDI currently has regulatory procedures to investigate and sanction improper conduct. Moreover, the CDI has failed to demonstrate, let alone “demonstrate by substantial evidence”, as required by the APA, that insurers have engaged in any unfair or deceptive practices that lead homeowners’ insurance policyholders to be underinsured. This is an important point, because the proposed regulation would include mere “communications” between the policyholder and the insurer pertaining to the policyholder’s selection of their homeowners’ insurance coverage policy limits within the purview of the Unfair Practice Act. Insurers are in the business of selling insurance products to consumers and may lawfully charge the consumer a higher premium for higher homeowners’ insurance coverage limits; therefore, it is hard to believe that insurers would be misleading or deceiving policyholders into being underinsured in their homeowner’s insurance coverage limits. Thus, the CDI should be required to demonstrate why its regulatory proposal to expose insurers to Unfair Practice Act liability is “reasonably necessary”. Government Code Section 11346.2(b) (1) provides that an Initial Statement of Reasons for a proposed regulatory action shall include a “statement of the specific purpose of the adoption, amendment, or repeal, and the rational for the determination by the agency that the adoption, amendment, or repeal is reasonably necessary...” [emphasis added]. Since the CDI has not presented any data, documentation, or evidence to support a reasonable conclusion</p>	<p>10102, is not a substitute for the regulations. The disclosure’s purpose is related to the insurance “policy.” The regulations purpose is to make clear what the term “replacement cost” estimate means. The regulation is not connected to the statute as the comment seems to suggest. The comment goes on to state that there is no evidence that insurance consumers are unable to properly evaluate their personal insurance needs and secure their own estimate of the likely cost to replacement their entire home. The regulations provide the definition of estimated “replacement cost,” thereby allowing the consumer to be “informed.” The regulations are not related to the pricing of insurance policies nor do they mandate the type of coverage to buy. The regulations purpose is to make clear what the term “replacement cost” estimate means.</p> <p>(2) Again, NAMIC and PADIC provide a comment not directed specifically to any section of the regulations, but argue that the Department lacks the authority to promulgate the regulations under Government Code Section 11349(b). NAMIC and PADIC offer that the Department cannot adopt regulations that have a direct and unavoidable impact upon homeowners’ insurance underwriting practices. To support this position, they cite <i>ALA v. Garamendi</i>, a de-published case. A de-published opinion may not be cited or relied upon by a party in any other action unless, pursuant to California Rule of Court 8.1115, when it is relevant under the doctrines of law of the case, res judicata, or collateral estoppel; none of which are applicable here. NAMIC and PADIC’s reliance on <i>Jutkowitz v. Bournes, Inc.</i> 118 Cal.App.3d 102, 106 (1981) is misplaced. This second appellate district case involved ongoing litigation. The proposed regulations do not represent litigation with NAMIC, PADIC or any other party in the <i>ALA v. Garamendi</i> case. Further, even assuming that <i>ALA v. Garamendi</i> could be cited, the arguments raised by NAMIC and PADIC are misplaced. The regulations do not have an impact on underwriting practices. The regulations do not specify, require or otherwise</p>

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	<p>that insurance carriers have not been complying with their duty to provide the state mandated California Residential Property Insurance Disclosures and/or that insurance consumers are unable to properly evaluate their personal insurance needs and secure their own estimate of the likely cost to replacement their entire home, the proposed regulation fails the APA's "necessity" requirement. B. The CDI has failed to establish that it has "regulatory authority" to add an entirely new section to the Unfair Practices Act, restrict truthful and non-deceptive insurance coverage communications with consumers, and impose new de-facto contractual or statutory duties on homeowners' insurance carriers. NAMIC and PADIC do not have concerns with the CDI's claim of authority to properly regulate Broker-Agent Training on Estimating Replacement Value, pursuant to Insurance Code section 1749.85. However, NAMIC and PADIC do contest the CDI's claim of authority to: a) adopt regulations that have a direct and unavoidable impact upon homeowners' insurance underwriting practices; b) restrict truthful and non-deceptive homeowners' insurance coverage limits communications between policyholders and their insurers; and c) impose new de-facto contractual and statutory duties on homeowners' insurance carriers. (2) a) The CDI lacks regulatory "authority" to adopt regulations that have a direct and unavoidable impact upon homeowners' insurance underwriting practices. As the Court of Appeals said in <i>AIA v. Garamendi</i>, "[t]he Insurance Code provides no express authority for regulating the underwriting of homeowners' insurance, nor can such expansive authority be implied. Unlike automobile insurance, homeowners' insurance is subject to only a few restrictions, all clearly set forth in the Insurance Code. Reading the Insurance Code to give the Commissioner broad authority to regulate underwriting beyond these specific provisions is inconsistent with the legislative scheme as a whole." Although NAMIC and PADIC appreciate the fact that the legal opinion in <i>AIA v. Garamendi</i></p>	<p>mandate how insurers underwrite homeowner policies. Insofar as the comment references Section 2695.183, this section requires that if the licensee states that it has calculated an estimate of "replacement cost," it will include those components listed in the regulation. In response to NAMIC and PADIC's interpretation of this section as meaning that it precludes a licensee from considering "their policyholder's independent estimate," the regulation applies to licensees, not homeowners. In consideration of this comment and others, proposed Section 2695.183 (o) is added which states that applicants or insureds may obtain his or her own estimate of replacement cost.</p> <p>(3) PADIC and NAMIC argue that the CDI lacks regulatory "authority" to add a new section to the Unfair Practices Act that restricts truthful and non-deceptive insurance coverage communications with consumers. California Insurance Code Section 790.03 states that: "The following are hereby defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance... (b) Making or disseminating or causing to be made or disseminated before the public in this state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatsoever, any statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any person in the conduct of his or her insurance business, which is untrue, deceptive, or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue, deceptive, or misleading." California Insurance Code Section 790.10 states: "The commissioner shall, from time to time as conditions warrant, after notice and public hearing, promulgate reasonable rules and regulations, and amendments and additions thereto, as are necessary to administer this article." The regulations merely state that it is misleading under Insurance Code Section 790.03 to characterize that an</p>

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	<p>was de-published, which means that the legal opinion in the case may not be cited in a different legal proceeding as controlling precedent, it is still an authoritative legal interpretation of the Insurance Code and an appellate court ruling on the CDI's lack of authority to regulate homeowners' insurance underwriting practices. Furthermore, from a procedural law standpoint, the fact that <i>Ala v. Garamendi</i> was de-published does not change the fact that the court's ruling is binding upon the parties to the action (the CDI and the three California insurance trades and their respective member companies: American Insurance Association, Association of California Insurance Companies, and Personal Insurance Federation of California). See <i>Jutkowitz v. Bournes, Inc.</i> 118 Cal.App.3d 102, 106 (1981).</p> <p>The legal analysis of the Court of Appeals in <i>Ala v. Garamendi</i> on whether the CDI has legal authority to regulate homeowners' insurance practices is clearly germane to the issue at hand, because the proposed regulation seeks to impose new restrictions on how insurers may underwriting homeowners' insurance replacement cost coverage limits. NAMIC and PADIC appreciate the fact that the proposed regulations do not specifically reference homeowners' underwriting practices. However, the proposed replacement cost and construction cost estimating standards, requirements, and communication restrictions will have a profound adverse impact upon the underwriting process.</p> <p>Section 2695.183 states that "[n]o licensee shall estimate replacement cost, or shall rely upon an estimate of replacement cost, to set or recommend a policy limit on a homeowner's insurance policy . . . unless the requirements and standards set forth in subdivisions (a) through (e) below are met." [emphasis added] The language of this section could be read to mean that an insurer <i>shall not rely upon</i> their policyholder's independent estimate of the replacement cost of their home (even if the policyholder has an estimate from a reputable professional</p>	<p>estimate is complete by communicating an estimate that does not include all of the components required to be considered in estimating replacement cost.</p> <p>(4) The noticed regulations stated specifically that that no provisions of the article shall be construed as requiring the licensee to prepare, communicate or use an estimate of replacement cost. Section 2695.183 (m) states specifically that no provision of this article "shall be construed as requiring a licensee to estimate replacement cost or to set or recommend a policy limit." There is no factual basis to support the comment that this provision is incompatible with the specific requirement in subdivision (j). First, the terms "setting" and "recommending" are removed from the original noticed regulations. Second, if a licensee chooses to communicate an estimate of replacement cost it must take into consideration the components listed in estimating it. To make this even more clear, proposed subdivision (j) has been amended as follows: "To communicate an estimate of replacement value not comporting with subdivisions (a) through (e) of this Section 2695.183 to an applicant or insured in connection with an application for or renewal of a homeowners' insurance policy that provides coverage on a replacement cost basis constitutes making a statement with respect to the business of insurance which is misleading and which by the exercise of reasonable care should be known to be misleading, pursuant to Insurance Code section 790.03."</p> <p>(5) NAMIC and PADIC comment that the regulations are not clear because they are "rife with ambiguous and contradictory requirements..." The comment does not identify any ambiguity, however. It does argue that the regulations are in direct "conflict" with the California Residential Property Insurance Disclosure which sets forth a description of types of homeowners' insurance coverage and the California Residential Property Insurance Bill of Rights. However, the comment does not specifically identify a "conflict" other than to state that</p>

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	<p>residential property estimator and is comfortable with the accuracy of their replacement cost estimate) in underwriting the insurance application unless the insurer complies with requirements of this regulation, including subdivision (e), which requires the insurer to “take reasonable steps to verify the sources and methods used [by the policyholder’s independent estimator] to estimate replacement cost are kept current to reflect changes in costs of reconstruction and rebuilding . . . .” [emphasis added] In other words, the insurer must do their own internal estimate of replacement cost so as to verify the policyholder’s estimate, before they can lawfully underwrite the application. Since a homeowner’s insurance policy premium may not be calculated (the very essence of the underwriting process - calculating a premium that actuarially reflects the policyholder’s risk of loss exposure for desired homeowners’ coverage limits) without homeowners’ insurance coverage policy limits information, Section 2695.183 clearly and directly effects an insurer’s homeowners’ insurance underwriting practices, and creates an unavoidable requirement that all insurers calculate their own internal replacement cost estimates in the way set forth by the CDI in the proposed regulation. How is this NOT a regulation of homeowners’ insurance underwriting practices? (3) b) The CDI lacks regulatory “authority” to add a new section to the Unfair Practices Act that restricts truthful and non-deceptive insurance coverage communications with consumers. The Unfair Practices Act addresses prohibited conduct that is untruthful, deceptive and misleading. The proposed regulation would fundamentally alter and expand the scope of this Insurance Code provision to prohibit how certain words (“replace” and “replacement”) may be used and/or communicated to consumers. Subdivision (j) states, “[w]hen setting, recommending or communicating about a policy limit on a homeowners’ insurance policy, to characterize using any form of the word ‘replace’ or ‘replacement’ any estimate of</p>	<p>neither the Disclosure nor the Bill of Rights provide that “an insurer shall ultimately be legally responsible for estimating and/or verifying the value of the applicant’s or policyholder’s residence, and improvements or renovations to the residence.” Though the comment asserts that the regulations create this legal responsibility, the comment fails to cite a section in the regulations that says this, or even implies it. The comment is disingenuous because the regulations do not create this duty. The Disclosure and Bill of Rights speak specifically to the homeowner insurance policy, itself. The regulations say nothing about the definition of policies described in the Disclosure and does nothing to change those descriptions. Again, while the comment claims that there is confusion as to whether the policyholder or the insurer bares the responsibility for determining the homeowners’ insurance policy limits, NAMIC and PADIC fail to cite a section that creates the ambiguity. The comment recommends that the regulations be tabled “until after the state legislature evaluates AB 2022 (Gaines), Property Insurance: Residential Disclosure, which amends the Property Insurance Disclosure to simplify and clarify the description of the various types of homeowners’ insurance coverages available to the consumer and provides additional information pertaining to insurance coverage limits.” Again, the comment is not related to the actual regulations as the regulations do not apply to descriptions of homeowners’ insurance policies or insurance coverage limits. To make this more clear, the proposed regulations have been amended by adding subdivision (n) to Section 2695.183 as follows: “Nothing in this article shall limit or preclude a licensee from providing and explaining the California Residential Property Insurance Disclosure, as cited in Insurance Code section 10102, explaining the various forms of replacement cost coverage available to an applicant or insured, or explaining how replacement cost basis policies operate to pay claims.”</p> <p>(6) The comment states in broad terms that “NAMIC and</p>

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	<p>construction cost not comporting with subdivisions (a) through (e) of this Section 2695.183 constitutes making a statement with respect to the business of insurance which is misleading. . . . The list of prohibited behavior in the Unfair Practice Act was established by the state legislature, with no formal granting of broad discretion to the CDI to expand the scope of the Act. Therefore, any additions to the list of prohibited behavior should be addressed by the state legislature not by way of agency regulation, especially when the proposed addition to the Unfair Practices Act exceeds the legislative intent of the prohibition against untruthful, deceptive or misleading conduct. (4) c) The CDI lacks regulatory "authority" to impose new de-facto contractual or statutory duties on homeowners' insurance carriers. NAMIC and PADIC appreciate that the proposed regulation specifically states that "[n]o provision of this article shall be construed as requiring a licensee to estimate replacement costs, to set, or recommend to an applicant or insured, a policy limit on a homeowners' insurance policy." However, this provision is entirely incompatible with the specific requirement in subdivision (j) which relates to "setting, recommending, or communicating about a policy limits on a homeowners' insurance policy" and requires that the insurer verify the replacement estimate created by a professional estimator or by the policyholder. In effect, the proposed regulation imposes a de-facto contractual or statutory duty on homeowners' insurance carrier to verify the accuracy of replacement cost estimates provided to them by the applicant or policyholder. (5) C. <u>The proposed regulation fails the "clarity" test of the APA, because it is rife with ambiguous and contradictory requirements and is in direct conflict with the state mandated California Residential Property Insurance Disclosures Government Code Section 11349(c) defines "Clarity" to mean "written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them."</u></p>	<p>PADIC believe that insurance consumers benefit from vigorous "market competition and common-sense public policy regulations." In fact, the regulations promote fair competition and common sense public policy by assuring that consumers have a consistent understanding of what is included in a "replacement cost" estimate, so that the consumer can make a better and more informed decision in comparing premiums among insurers, on what insurance products to buy and what amount of coverage should be purchased. While NAMIC and PADIC opine that the regulation will not promote market competition, because it will adversely impact how different insurance carriers conduct their homeowners' insurance underwriting practice, it does not explain how or cite to a regulation to support this conclusion. NAMIC and PADIC claim that there will be "new" cost-drivers associated with having to verify how professional reconstruction estimators calculate their estimates. The regulations do not require that licensees must verify "how" estimators calculate their estimates. The regulations require that the sources and methods are kept current. In response to this comment, and others, to further make clear the obligation of a licensee in this regard, the text of proposed Section 2695.183 (e) has been amended as follows: "The licensee shall no less frequently than annually take reasonable steps to verify that the sources and methods used to generate the estimate of replacement cost are kept current to reflect changes in the costs of reconstruction and rebuilding, including changes in labor, building materials, and supplies, based upon the geographic location of the insured structure. The estimate of replacement cost shall be created using such reasonably current sources and methods." Further, with respect to the NAMIC and PADIC comment, they do not represent that their members do not currently "verify" that the sources and methods of their estimator vendors are kept current. In this regard, there has been no factual basis offered that "new" costs will be associated with regulatory compliance.</p>

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	<p>[emphasis added]. Current state law specifically requires insurers to provide to applicants or policyholders a copy of the California Residential Property Insurance Disclosure, which sets forth a description of types of homeowners' insurance coverage, such as actual cash value coverage, guaranteed replacement cost coverage, etc. Existing law also requires every California Residential Property Insurance Disclosure be accompanied by a California Residential Property Insurance Bill of Rights. Neither the Property Insurance Disclosures nor the Bill of Rights state that an insurer shall ultimately be legally responsible for estimating and/or verifying the value of the applicant's or policyholder's residence, and improvements or renovations to the residence. However, the proposed regulation arguably creates such a legal duty. Therefore the proposed regulation, in its entirety, creates greater uncertainty and confusion as to whether the policyholder or the insurer bears the responsibility for determining the homeowners' insurance policy limits. NAMIC and PADIC believe that the proposed regulation needs to be compatible with the state mandated Property Insurance Disclosures and Bill of Rights. Consequently, we respectfully recommend that the proposed regulations be tabled until after the state legislature evaluates AB 2022 (Gaines), Property Insurance: Residential Disclosure, which amends the Property Insurance Disclosure to simplify and clarify the description of the various types of homeowners' insurance coverages available to the consumer and provides additional information pertaining to insurance coverage limits. (6) II. The proposed regulation is inconsistent with the best interest of the insurance consumer. NAMIC and PADIC believe that insurance consumers benefit from vigorous market competition and common-sense public policy regulations. The proposed regulation will not promote market competition, because it will adversely impact how different insurance carriers conduct their homeowners' insurance underwriting practice. It will also create new administrative</p>	<p>Additionally, NAMIC and PADIC comment that the because the regulation "...subjects insurers to Unfair Practices Act liability exposure if they assist or even communicate with the policyholder about the estimated replacement cost, insurers will be discouraged (from a risk-prevention standpoint) from assisting their policyholder's or applicant in evaluating their personal insurance coverage needs." As noted in response to NAMIC and PADIC's comment (3) above, the comment reaches this conclusion without a factual basis. The regulation states simply that it is misleading under Insurance Code Section 790.03 (b) to characterize that an estimate is complete by communicating an estimate that does not include all of the components required to be considered in estimating replacement cost. In response to this comment and others, the text of Section 2695.183 (j) has been amended as referenced above in response to comment (4).</p>

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<p><b>Association of Mutual Insurance Companies</b></p>	<p>cost-drivers associated with having to verify how professional reconstruction estimators calculate their estimates. Consumers and insurers retain the services of these estimator experts, because they have the experience, professional acumen, and resources necessary to conduct a complex, multi-variable assessment necessary to estimate the cost of rebuilding a personal residence. Asking the insurers to verify the validity and accuracy of their expert's work will be quite expensive and these new cost-drivers will likely be passed on to the consumer in the form of higher insurance rates and/or reduced customer services. This is of particular concern to small to mid-sized domestic insurers, because they don't have the internal "scale of economy" necessary to absorb these new administrative costs and burdens, and may have to purchase new estimating software systems and equipment, and/or retain estimator experts to comply with the estimator verification requirement of the regulation. These new costs could ultimately impact their ability to be competitive in the insurance marketplace and provide new insurance products to the consumer. Additionally, since the proposed regulation subjects insurers to Unfair Practices Act liability exposure if they assist or even communicate with the policyholder about the estimated replacement cost, insurers will be discouraged (from a risk-prevention standpoint) from assisting their policyholder's or applicant in evaluating their personal insurance coverage needs. In effect, the proposed regulation could limit a consumer's access to important insurance coverage information, deny them the benefits of their carrier's assistance, and adversely impact the many small to mid-sized insurers who have developed a market niche based upon comprehensive customer services.</p> <p>CHRISTIAN RATAJ: Good morning. My name is Christian Rataj with National Association of Mutual Insurance Companies. We're a national trade association of property and casualty insurers. We have 1,400</p>	<p><b>Response to Association of Mutual Insurance Companies (NAMIC) and the Pacific Association of Domestic Insurance Companies (PADIC) testimony at public hearing on May 17, 20010 in Los Angeles, CA:</b></p>