



Consumer Federation of America

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Dear Commissioners:

We write to offer some ideas for your consideration as you deal with the remarkably tragic and difficult insurance issues in the wake of Hurricane Katrina. First, we offer our deepest sympathy and support to you personally and to the people of your state at this time of devastating loss. If there is any way that we can be of specific help during this time, please call upon us.

We have been through hurricanes and their aftermaths before in our careers, and we have some ideas about steps that can be taken to help your constituents obtain prompt and fair settlement of their losses. Some of the steps have already been taken in that at least some of you have had meetings in Atlanta with the top insurance executives to let them know your expectations, and you are conferring with the Florida Insurance Department about their unfortunately extensive experience in handling hurricanes. These are excellent first steps, and we congratulate you for taking them.

We encourage you to look in depth at the steps taken by Florida in the wake of Hurricane Andrew. This relates both to the potential for insurers to refuse to renew policies and to pricing and claims handling. In addition to the effective aspects of Florida's response, we encourage you to examine serious problems that arose in the wake of Hurricane Andrew, such as class action lawsuits involving valued policy laws.

### **Nonrenewal of property coverage**

You will recall that, after Hurricane Andrew, Allstate Insurance Company threatened not to renew policies for 300,000 Florida families. This created a crisis, as insurers were not taking on new business at the time. Where were these 300,000 households to go to get insurance? The

legislature wisely imposed a moratorium on cancellations and non-renewals of homeowners' insurance policies to give the state time to develop a plan for insuring homes that could not get or keep private insurance. I encourage you to urge your legislatures to be ready to act should you determine that insurers are beginning to pull back in your states.

### **Price increases**

We also urge you to freeze home insurance prices at this time in reaction to what may be a short-term non-competitive market. After Hurricane Andrew, the insurers made massive changes to their ratemaking systems, moving from the use of recent history to set hurricane prices to the use of scientific models to do this job. The models project many years of virtual hurricane experience using scientific information pertaining to each reach of the shoreline, the topography of the ocean floor and the inland paths of storms to determine the risk in very small geographic areas. Some models project 10,000 years of this "experience" in which many scenarios are possible. Large events, such as Katrina, and even larger ones, such as a category 5 hurricane directly hitting Miami, are built into these projections.

One particular hurricane should not have a major impact on the results of the model, unless the modeler sees some underlying flaw in the local aspect of the model's projections. That means that rates should not swing widely again as they did a decade ago after Andrew caused the industry to go back to the drawing board.

We supported the industry's move to models after Andrew as appropriate, as long as the government had the ability to see the models, test the assumptions, ensure the models did not have an unfairly discriminatory outcome, and so forth. However, we do not think that another major rate increase would be justified at this time because a major loss occurred, since such a loss is already accounted for in the model and the rates that homeowners have already been paying. Fortunately, the property/casualty insurance industry is in a period of record profitability, and any market dislocation should be short, so the need for a pricing moratorium should likewise be brief.

### **Insurance claims handling**

Insurance commissioners in affected states should build systems now to assure that claims are handled fairly and quickly. As part of your duties to protect the public and insurance consumers, this is a critical responsibility. The scale of losses from this storm means insurance companies will have to put significant resources into claims handling – if they do not, claims may be delayed or unfairly denied resulting in delays in rebuilding, certainly affecting families and likely impacting economic recovery.

The Florida Department's experience after Hurricane Andrew may provide guidance here as well – they established a system that required companies to itemize outstanding claims so the Department could monitor progress on resolving them. This allowed the Department oversight so that, as claims got older, regulators could intervene before problems got worse. A system could alert regulators as claims remain unresolved after 30, 45, 60 days, or longer. Using this type of model would allow state regulators to track how quickly companies are resolving claims

and would provide an early warning if companies are devoting insufficient resources to resolving claims. Consumer complaints are useful, but waiting to receive complaints about poor claims handling risks losing the ability to address claims handling problems before they get out of control.

### **Insurance underwriting and scoring**

As many residents relocate – temporarily or permanently – from affected areas, insurance commissioners in states housing these people should take steps to assure insurance availability. The widespread use of insurance scoring may affect the ability of these people to get essential insurance coverage – like auto and property – in their new residences. Insurance commissioners should take steps now to require that insurance scoring models exclude economic impacts from Katrina so victims can buy the kinds of essential insurance products necessary to get on with their lives. Regulators should be alert to other kinds of underwriting criteria – minimum residency requirements, for example – that may impact the ability of victims to get key insurance coverage. Temporarily easing availability of insurance pooling mechanisms for displaced victims might also ease the transition for displaced families.

### **Allocating losses between wind and flood**

One of the issues that is getting a lot of attention and is critical for you to watch carefully is the wind/flood allocation issue. CFA has asked the Federal Insurance Administration to call in insurers and make sure that consumers with both homeowners' wind/rain coverage and flood insurance get paid promptly (a copy of that letter is attached). CFA is also writing to key Congressional Committee Chairs and Ranking Members asking that the GAO be brought in to assure that the allocation of flood and wind damage is fair to the insurers and to the taxpayer. As you are well aware, insurers often have a conflict of interest in allocating losses because the federal government would cover flood losses while they must pay wind/rain losses. Assuring that this conflict of interest is mitigated should also have the benefit of helping those without flood coverage, since it would be difficult for an insurer to use different practices and achieve different results on similar claims.

As you know, the insurance contract is a contract of adhesion. As a result, we urge you to require insurers to make determinations to resolve ambiguous policy language regarding coverage in favor of the insured. The courts are very likely to find in favor of an insured regarding ambiguous coverage, but it would be inhumane to require hurricane victims to incur the expense and difficulty involved in taking a claim to court to get the benefit of the doubt to which they are entitled.

There certainly was a wind element in the storm surge and in the breaching of the levees in New Orleans and aggravating the storm surge throughout the Gulf Coast. How this plays out in claims adjustments is a critical question that will likely end up in the courts. The question of valued policy laws will also be raised in jurisdictions with such laws, as Florida cases have revealed. Any innovative efforts you can take to convince insurers that it is in their best interests

to carefully consider ways to pay every penny they owe will cut down on litigation and help your people recover more quickly from the devastation of Hurricane Katrina.



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Yours truly,



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