Consumer Federation of America

1620 I Street NW
Suite 200
Washington, DC
20006

202-387-6121
info@consumerfed.org
ConsumerFed.org

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Sara Ahn, Staff Counsel
California Department of Insurance
c/o Office of the Special Counsel
300 Capitol Mall, 16th Floor
Sacramento, CA 95814
Phone: 213-346-6635
Email: CDIRegulations@insurance.ca.gov

Re: Proposed Catastrophe Modeling and Ratemaking Regulation—REG-2023-0010

The Consumer Federation of America (CFA) submits these comments in addition to its oral comments to highlight our deep concern that the proposed regulations—REG-2023-0010—will both allow insurers to use unverifiable catastrophe models that could lead to excessive homeowners insurance rates and fail to make high-quality insurance coverage more affordable and accessible for distressed California communities where homeowners are currently finding it difficult to obtain the required and essential insurance they need. Our opposition to these regulations should not be misunderstood as a blanket opposition to the use of modeling techniques to improve rate accuracy. Though we do not think it is wise to allow the use of catastrophe models on a virtually unregulated basis as is contemplated in these rules, we do not dispute the possibility that modeling could assist in the ratemaking process.

The Consumer Federation of America would support—and has expressed this at several prior hearings—a Department of Insurance and State of California joint effort to create a transparent and public-interest oriented catastrophe model to assist homeowners insurance companies in evaluating their prospective wildfire exposure as they develop rates. We applaud the Commissioner's announcement of the Department's partnership with Cal Poly Humboldt and below note how that announcement should interact with and be incorporated into the current proposed regulation. We would also support regulations that allow third party or otherwise privately developed catastrophe models to be used as a complement to a public catastrophe model, if those models were subject to technical scrutiny by the Department, consumer representatives, and the general public.

However the proposed regulation offers neither of those sensible and balanced approaches to the industry's demands to use forward looking models. Instead the proposed regulation creates a confidential, non-public process for determining what information state regulators and the public are allowed to learn about these models that will help determine how much Californians pay for this financial product. It cannot be ignored that the insurance that will be priced with these opaque models is not only a critical facilitator of homeownership opportunity and community resilience, but also a mandatory purchase for most Californians who own a home.

At every opportunity provided by the Department, CFA has urged the Department to take a leadership role in funding and developing a California public wildfire model that would serve the purpose of ensuring accurate and accountable rates, and we appreciate the Department's announcement of its public model project with Cal Poly Humboldt. In light of the Department's initiation of the project, we recommend that this regulation be amended to provide that insurers may incorporate use of the public model in its ratemaking without a PRID (Pre-Application Required Information Determination Procedure) process, assuming, as we do, that the public model will indeed be publicly accessible. We further suggest that the regulation be amended to require the Department to use the public model as either a baseline tool for evaluating the outputs of private models relied upon in a rate filing, or require that the carrier use the public model as an equal complement to the private model included in its rate filing.

The regulation, at Section 2644.4 (f)(2), requires that "the applicant's use of its selected model(s) produces the most actuarially sound estimate of projected catastrophe losses." But the rule does not create any standards or mechanisms for evaluating if the model itself is sound or provide any clarity as to what, at a minimum, must be included with a rate filing. The regulation should be revised to provide a detailed set of guidance about the level of granularity of data, the modeling inputs and techniques, the assumptions, the acceptable level of uncertainty, and other elements that always must be disclosed and subject to public scrutiny.

Rather than providing clear guidance as to what is necessary for the evaluation of scientific, technical, and actuarial soundness and reliability of catastrophe models, the rule as drafted leaves that responsibility to a confidential process that could vary from company to company and model to model. We believe this will create a regulatory inconsistency that will cause confusion for insurers, modelers, and importantly, consumers in the marketplace. This rule essentially defers the regulation of models to a non-public setting, which seems to protect modeling corporations and the insurance companies without insisting on clear protections for the homeowners who will pay for the coverage.

Compared to an early draft of the regulation, Section 2648.5 (n) has been significantly weakened with respect to when models are required to even face the PRID process. Insofar as the Department continues to contemplate a PRID procedure, this change should be reversed. In the earlier iteration the PRID procedure could be relied upon for two years only if the model has not changed "in any way." In this version, the Department is allowing a model to be used for four years and even if it has changed as long as it has not been "substantively" changed, without any clear standard for what is a substantive change. Is a move from version 13 to 14 substantive? What about a move from version 13 to version 13.1? Model approval should not be valid for more than two years, nor should there be any confusion as to what constitutes a change that renders a prior PRID procedure irrelevant to a proposed rate filing.

With respect to the "insurer commitments" required in proposed Section 2644.4.8, CFA urges the Department to delete the several alternative means of complying with insurer commitment goals other than the eighty-five percent standard. For example, the five percent increment alternative creates a significant loophole for insurers that have aggressively turned their backs on California communities over the last few years. An insurer that has mostly withdrawn from distressed communities and otherwise has a large statewide market share could comply with this regulation by adding only a small number of policies. By contrast, a smaller insurer that stood by California consumers in those communities could be required to carry a much higher percentage of homes in high and moderate risk communities than the larger insurer. Similarly the other alternate commitment options essentially allow insurers to use the catastrophe models without any meaningful return to the Californians who have been left behind by the actions of insurers in recent years.

Finally, the rules governing public participation in the PRID procedure will discourage engagement in the process by public interest organizations. California's intervenor process was adopted specifically to add an unequivocally consumer-oriented perspective to the rate- and rule-making process. The statute was crafted to ensure that consumers would have expert voices representing their interests in the process and that consumer representatives could participate, if not on equal footing with the vast resources of industry, at least with a reasonable degree of confidence that resources will be available to represent consumer interests. This new PRID procedure rule is crafted to dramatically undermine public interest organizations and diminish their degree of confidence that they will be able to provide an unequivocal defense of consumer interests. We urge the Department to rescind the proposed language that will make consumer representation more risky and less viable.

Thank you for considering our views on the draft regulation.

Sincerely,

Douglas Heller
Director of Insurance
Consumer Federation of America

Michael DeLong
Research and Advocacy Associate
Consumer Federation of America