

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street
San Francisco, CA 94105

RH03030726

May 30, 2006

PROPOSED REGULATION TEXT

TITLE 10
CHAPTER 5
SUBCHAPTER 3
ARTICLE 7.4
RESIDENTIAL PROPERTY AND EARTHQUAKE INSURANCE
RATING AND ELIGIBILITY

The following regulation text is proposed for adoption:

Section 2399.0. Preamble and Scope.

- (a) *These regulations interpret the provisions of Division 2, Part 1, Chapter 8.5 of the California Insurance Code, entitled "Earthquake Insurance." The regulations further the purposes of Chapter 8.5 by ensuring that earthquake coverage will be available to all residential property insurance policyholders. These regulations prohibit the use of any eligibility guidelines which discriminate against policyholders who wish to accept an offer of earthquake coverage. In particular, the regulations prohibit an insurer from implementing underwriting guidelines that effectively reject, cancel or refuse to renew residential property or mandatory earthquake insurance on grounds that relate to the risk of loss due to earthquake. However, the regulations expressly recognize and accommodate an insurer's need to develop adequate rates for earthquake loss exposure.*
- (b) *The provisions of this article shall apply to any insurance transaction subject to the provisions of Division 2, Part 1, Chapter 8.5 of the California Insurance Code, beginning with section 10081, entitled "Earthquake Insurance." This article shall apply to the following underwriting decisions:*
- (1) the decision to accept or reject an application for residential property or earthquake insurance;*
 - (2) the decision to continue or cancel a residential property or earthquake insurance policy;*
 - (3) the decision to renew or nonrenew a residential property or earthquake insurance policy.*

- (c) *The provisions of Division 1, Part 2, Chapter 9 of the California Insurance Code, beginning with section 1850.4, entitled “Rates and Rating and Other Organizations,” are applicable to the administration, enforcement and interpretation of this article.*

NOTE: Authority cited: *CalFarm Insurance Company v. Deukmejian*, 48 Cal.3d 805 (1989); *20th Century Insurance Company v. Garamendi*, 8 Cal. 4th 216 (1994); *State Farm Mutual Auto. Ins. Co. v. Garamendi* 32 Cal.4th 1029 (2004). Reference: Sections 675, 676, 678, 1857, 1858, 1860.3, 1861.05, 10081, 10082, 10082.5, 10086.5, 10087, 10089.2, 12921 and 12926, Insurance Code; *Williams v. State Farm Fire and Casualty Co.* 216 Cal.App.3d 1540 (1990).

Section 2399.1. Prohibited Eligibility Criteria; Presumptions and Burden of Proof.

- (a) *No insurer shall cancel, reject, or refuse to renew residential property insurance or earthquake insurance coverage based in whole, or in part, on the grounds that:*
- (1) *the dwelling is not bolted to the foundation;*
 - (2) *the dwelling lacks cripple wall bracing, sheerwalls, or other reinforcement for the transfer of lateral forces into the foundation;*
 - (3) *the chimney or fireplace of the dwelling to be insured lacks reinforcement to resist forces generated by seismic events;*
 - (4) *the hot water heater in the dwelling to be insured is not braced, anchored or strapped to resist forces generated by seismic events.*
- (b) *No insurer shall cancel, reject, or refuse to renew residential property insurance or earthquake insurance coverage, when the cancellation, rejection or refusal to renew is based solely on a dwelling’s risk of loss due to earthquake. In addition, no insurer shall maintain any eligibility guideline that negatively impacts eligibility for residential property insurance or the mandatory offer of earthquake insurance based on elements of the dwelling solely related to the risk of loss due to earthquake.*
- (c) *The insurer shall bear the burden to show that an eligibility guideline is not solely related to the risk of loss due to earthquake.*

NOTE: Authority cited: *CalFarm Insurance Company v. Deukmejian*, 48 Cal.3d 805 (1989); *20th Century Insurance Company v. Garamendi*, 8 Cal. 4th 216 (1994); *State Farm Mutual Auto. Ins. Co. v. Garamendi* 32 Cal.4th 1029 (2004). Reference: Sections 675, 676, 678, 1857, 1861.05, 1861.13, 10081, 10082, 10082.5, 10086.5, 10089.2, 12921 and 12926, Insurance Code; *Williams v. State Farm Fire and Casualty Co.* 216 Cal.App.3d 1540 (1990).

Section 2399.2. Earthquake Insurance Rates.

- (a) *Insurers subject to this article may file rates and rate factors for their residential property and earthquake insurance programs to reflect the expected losses and expenses under the applicable insurance contract attributable to earthquakes. Such rates shall be determined and assigned in accordance with the provisions of Division 1, Part 2, Chapter 9 of the California Insurance Code, beginning with section 1850.4. Additionally, such rates shall comply with the provisions of Division 2, Part 1, Chapter 8.5 of the California Insurance Code, beginning with section 10081.*

(b) *No insurer subject to this article shall develop premium in any manner for either a residential property or earthquake insurance policy, based on a loss exposure not covered under the insurance contract. Insurers shall maintain separate rates and rating plans for residential property insurance and for earthquake insurance.*

NOTE: Authority cited: *CalFarm Insurance Company v. Deukmejian*, 48 Cal.3d 805 (1989); *20th Century Insurance Company v. Garamendi*, 8 Cal. 4th 216 (1994); *State Farm Mutual Auto. Ins. Co. v. Garamendi* 32 Cal.4th 1029 (2004). Reference: Sections 1857, 1861.01, 1861.05, and 1861.055, 1861.13, 10082.5, 10083, 10086.5, 10087, 10087.5, 10088, 10088.5, 10089, 10089.1, 10089.2, and 12921, subd. (a), Insurance Code.

Section 2399.3. Severability.

If any provision of this article, or the application of any provision of this article to any person or to any circumstance, is held invalid, such invalidity shall not affect other provisions or applications of these regulations which can be given effect without the invalid provision or application, and to this end, the provisions of this article are severable.

NOTE: Authority cited: Insurance Code; *CalFarm Insurance Company v. Deukmejian*, 48 Cal.3d 805 (1989); *20th Century Insurance Company v. Garamendi*, 8 Cal. 4th 216 (1994); *State Farm Mutual Auto. Ins. Co. v. Garamendi* 32 Cal.4th 1029 (2004). Reference: Sections 1861.01, 1861.05, 1861.055, 10082.5, 10083, 10086.5, 10087, 10087.5, 10088, 10088.5, 10089, 10089.1, 10089.2, 12921 and 12926, Insurance Code.