

DEPARTMENT OF INSURANCE

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February 23, 2012

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Personal Insurance Federation of California
1201 K Street, Suite 1220
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Re. Legal Opinion Pursuant to Insurance Code Section 12921.9¹ Regarding California Earthquake Authority "Choice" Policy Coverage

Dear Ms. Dellinger Dunn:

You requested my legal opinion on the following question: Provided an insurer offers the California Earthquake Authority ("CEA") "Basic Earthquake Policy – Homeowners" ("Basic") product to all its customers, does the insurer satisfy the requirements of Chapter 8.5, commencing with Section 10081, of Part I of Division 2 of the Insurance Code if the insurer also offers the "Basic Earthquake Policy – Homeowners Choice" ("Choice") product to all its customers?

I. Answer

Yes. Pursuant to Section 10089(c)², the Choice product was approved by the Commissioner in a rate application, and is offered *in addition to*, and as an optional alternative to, the CEA's

¹ Insurance Code Section 12921.9 provides:

(a) A letter or legal opinion signed by the Commissioner or the Chief Counsel of the Department of Insurance that was prepared in response to an inquiry from an insured or other person or entity and that discusses either generally or in connection with a specific fact situation the application of the Insurance Code or regulations promulgated by the commissioner shall be made public. The department may redact the name, address, policy number, and other identifying information regarding a particular insured or other person or entity from the letter or legal opinion when it is made public.

(b) A letter or legal opinion made public pursuant to this section shall not be construed as establishing an agency guideline, criterion, bulletin, manual, instruction, order, standard of general application, rule, or regulation, as those terms are described in Sections 11340.5 and 11342.600 of the Government Code.

² Insurance Code Section 10089(c) provides:

The commissioner may approve rate applications that allow the insurer to offer policies providing coverage other than the coverage specified in this section provided that at least one coverage offered meets the criteria provided in this section.

existing “Basic Earthquake Policy – Homeowners” (“Basic”) product. While the Basic product meets Section 10089(a) and (b) requirements, the Choice product is an additional, optional, Commissioner-approved product which meets Section 10089(c) requirements. An insurer that offers its customers the Basic product and the Choice product therefore meets the requirements of Chapter 8.5.³

II. Analysis

The CEA Choice product, to be offered by CEA Participating Insurers beginning July 1, 2012, was approved by the Commissioner in Prior Approval Rate Application No. 11-2233 on July 13, 2011. The Choice product includes a range of limits and deductible options and covers many potential losses, including dwelling, extensions to dwelling, personal property, loss of use, emergency repairs, debris removal, building code upgrades, and land.

Consumers may choose lower deductibles, increased limits, or other Choice policy terms to suit their needs. Consumers are also granted the option to decline certain coverage, including personal property and/or loss of use. The Choice product will be offered in addition to the Basic product.

The existing Basic product is offered pursuant to Section 10081 and meets the Section 10089(a) and (b) coverage requirements. That offer will continue unchanged and is unaffected by an insurer additionally offering the optional Choice product. The Choice product is not offered pursuant to Section 10081. It is an optional product offered pursuant to Section 10089(c) in addition to the Basic product.

A product offered pursuant to Section 10081 must meet Section 10089(a) and (b) coverage requirements.⁴ A product offered pursuant to Section 10089(c) must meet two separate requirements – (1) it must be approved by the Commissioner and (2) offered in addition to a product which meets the Section 10089(a) and (b) coverage requirements.

The Choice product was approved by the Commissioner and is offered in addition to the Basic product, which meets Section 10089(a) and (b) coverage requirements. Further, although not required, the Choice product offers consumers the option of purchasing coverage greater than that specified in Section 10089(a) and (b). Accordingly, so long as an insurer offers the Basic product to all its customers, if the insurer also offers the Choice product, it meets the earthquake insurance offer requirements of the Insurance Code.

The public interest sought to be protected by Sections 10081, 10082 and 10089 is the availability of a minimum level of insurance protection against the peril of earthquake. This interest is met through the CEA’s Basic product. The availability of an *additional* Choice product serves only to enhance the protection of consumer interests.

³ See Insurance Code Section 10089.41(a): “The offer of an authority policy by a participating insurer shall constitute a mode of insurer compliance with Chapter 8.5 (commencing with Section 10081) of Part I of Division 2, and as set forth in Section 10084.”

⁴ See Insurance Code Section 10089(a): “At a minimum, an offer of coverage of loss or damage caused by the peril of earthquake pursuant to Section 10081 shall include the following coverages”

Very truly yours,

/s/

Adam M. Cole
General Counsel