dealing with a violator, such as the appointment of a conservator to take possession of the property, business, and assets of a broker-dealer or investment adviser; orders to discontinue business operations; orders to discontinue unsafe or injurious practices; administrative penalties; and restitution damages on behalf of the victim. SB 2060 was signed by the Governor on August 24 (Chapter 391, Statutes of 1998).

AB 2428 (Knox), as amended July 2, exempts from the provisions of the California Finance Lenders Law any public corporation public entity, other than the state, or any agency of those entities, when making a loan in compliance with federal and state laws and regulations. AB 2428 also extends indefinitely existing law authorizing finance lenders to sell to institutional lenders or investors promissory notes evidencing an obligation to repay certain federally related mortgage loans (consumer loans) or the obligation to repay real estate secured business purpose loans (commercial loans). The Governor signed this bill on September 11 (Chapter 428, Statutes of 1998).

AB 2039 (Baugh), as amended July 27, exempts a “non-profit church extension fund” from the provisions of the California Finance Lenders Law, defined in the bill to mean “a non-profit organization affiliated with a church, that is formed for the purpose of making loans to that church’s congregational organization or organizations for site acquisitions, new facilities, or improvements to existing facilities, purchased for the benefit of the church congregational organization.” The Governor signed AB 2039 on September 13 (Chapter 469, Statutes of 1998).

SB 1512 (Maddy) allows a licensee under the California Finance Lenders Law to contract for and receive a delinquency fee for defaults in loans payments, with respect to loans under $5,000 (and except for precomputed loans), subject to certain limitations on the amount of the fee and the period of default. This bill was signed by the Governor on July 3 (Chapter 104, Statutes of 1998).

AB 2694 (Pacheco). Under the California Residential Mortgage Lending Act, the Corporations Commissioner is authorized to order a licensee that opens a branch office in California or changes its business location or its locations from which activities are conducted, without first obtaining approval from the Commissioner, to forfeit a specified amount. As amended July 2, AB 2694 makes that provision applicable where the licensee has not first notified the Commissioner of its action. This bill was signed by the Governor on July 18 (Chapter 178, Statutes of 1998).

AB 1860 (McClintock) prohibits the acquisition of any escrow agent license directly or indirectly, through stock purchase, foreclosure pursuant to a pledge or hypothecation, or other device, without the consent of the Corporations Commissioner, and requires that the escrow agent file a new application for licensure prior to the transfer of 10% or more of the shares of the escrow agent unless the transfer will be made by an existing shareholder to another existing shareholder who also owns 10% or more of the shares of the escrow agent before the transfer. AB 1860 was signed by the Governor on July 18 (Chapter 174, Statutes of 1998).

Department of Insurance

Commissioner: Charles Quackenbush ◆ (415) 538-4376 ◆ (916) 492-3500 ◆ Toll-Free Complaint Number: 1-800-927-4357 ◆ Internet: www.insurance.ca.gov

Insurance is the only interstate business wholly regulated by the several states rather than the federal government.

In California, this responsibility rests with the Department of Insurance (DOI), organized in 1868 and headed by the Insurance Commissioner. Insurance Code sections 12919 through 12937 set forth the Commissioner’s powers and duties. Authorization for DOI is found in section 12906 of the 800-page Insurance Code; the Department’s regulations are codified in Chapter 5, Title 10 of the California Code of Regulations (CCR).

The Department’s designated purpose is to regulate the insurance industry in order to protect policyholders. Such regulation includes the licensing of agents and brokers, and the admission of companies to sell insurance products in the state. In California, the Insurance Commissioner licenses approximately 1,500 insurance companies that carry premiums of approximately $65 billion annually. Of these, 607 specialize in writing life and/or accident and health policies.

In addition to its licensing function, DOI is the principal agency involved in the collection of annual taxes paid by the insurance industry. The Department also collects more than 175 different fees levied against insurance producers and companies.

The Department also performs the following functions:

1. It regulates insurance companies for solvency by tri-

annually auditing all domestic insurance companies and by selectively participating in the auditing of other companies licensed in California but organized in another state or foreign country;

2. It grants or denies security permits and other types of formal authorizations to applying insurance and title companies;

3. It reviews formally and approves or disapproves tens of thousands of insurance policies and related forms annually as required by statute, principally related to accident and health, workers’ compensation, and group life insurance;

4. It establishes rates and rules for workers’ compensation insurance;

5. It preapproves rates in certain lines of insurance under Proposition 103, and regulates compliance with the general rating law in others; and

6. It becomes the receiver of an insurance company in financial or other significant difficulties.

The Insurance Code empowers the Commissioner to hold hearings to determine whether brokers or carriers are complying with state law, and to order an insurer to stop doing business within the state. However, the Commissioner may not force an insurer to pay a claim; that power is reserved to the courts.
DOI has over 1,100 employees and is headquartered in San Francisco. Branch offices are located in Los Angeles, Sacramento, and San Diego. The Commissioner directs 21 functional divisions and bureaus, including the Consumer Services Division and the Fraud Division.

DOI’s Consumer Services Division operates the Department’s toll-free complaint line. Through its bureaus, the Division responds to requests for general information; receives, investigates, and resolves individual consumer complaints against insurance companies, agents, and brokers that involve violations of statute, regulations, or contractual provisions; initiates legislative and regulatory reforms in areas impacting consumers; and tracks trends in code violations and cooperates with law enforcement to bring deterrence compliance actions. Cases which cannot be resolved by the Consumer Services Division are transferred to the Compliance Bureau within the Legal Division, which is authorized to file formal charges against a licensee and take disciplinary action as appropriate, including cease and desist orders, fines, and license revocation.

The Department’s Fraud Division (originally the Bureau of Fraudulent Claims) was established in 1979 to protect the public from economic loss and distress by actively investigating and arresting those who commit insurance fraud. The Fraud Division is currently composed of three separate fraud programs: automobile, workers’ compensation, and special operations (which includes property, health, life, and disability insurance fraud).

Major Projects

Quackenbush Reelected as Insurance Commissioner

On November 3, Republican Chuck Quackenbush defeated Democrat Diane Martinez to regain his post as Insurance Commissioner. Martinez, a termed-out Assemblymember, refused to take contributions from the insurance industry. She raised only $125,000 for her campaign, compared with Quackenbush’s war chest of $23 million.

Consumer advocates widely criticized Quackenbush during his reelection campaign for accepting campaign contributions from the industry he regulates. In late October, Harvey Rosenfield, head of the Proposition 103 Enforcement Project, reported that Quackenbush took in $300,000 from the insurance industry during the 1998 campaign. Since 1994, Quackenbush—a former Assemblymember—has accepted over $6 million from insurers.

During her three terms in the legislature, Martinez gained a reputation as a combative lawmaker. Her campaign promised to cap auto insurance rates and order a rate reduction of as much as 20%. She also wanted to remove HMO regulation from the Department of Corporations and transfer it to the control of the Department of Insurance. Martinez complained that even though Quackenbush “has the easiest job in the state,” as his duties are outlined by Proposition 103, he has refused to perform those duties—as evidenced by a court’s June 1998 order invalidating his “auto rating factors” implementing a key provision of Proposition 103 (see LITIGATION).

Quackenbush promised that he would continue his policy of fostering competition among insurers. In response to allegations that he is too friendly with the industry he regulates, he emphasized the fact that during his first term as Insurance Commissioner, DOI levied fines in the amount of $36 million—six times the amount of fines levied by his Democratic predecessor, John Garamendi, during his term as Insurance Commissioner. However, almost half of this $36 million derived from a fine against Prudential—a sanction that resulted from an investigation carried out primarily by other states.

**DOI Refines Definition of “Substantial Increase in the Hazard Insured Against”**

Effective November 4, DOI has amended section 2623.19, Title 10 of the CCR, which defines the term “substantial increase in the hazard insured against” in section 1861.03(c) of the Insurance Code. Section 1861.03 was added by Proposition 103 in 1988; this provision prohibits insurers from canceling or nonrenewing a private passenger automobile insurance policy except for (1) nonpayment of premium, (2) fraud or material misrepresentation affecting the policy of the insured, or (3) a substantial increase in the hazard insured against.

Because the term “substantial increase in hazard insured against” is not defined in the Insurance Code, DOI must adopt regulations to define it. Former Commissioner Garamendi first adopted section 2632.19 to define the term in December 1993. [14:1 CRLR 104; 13:4 CRLR 115; 13:2 & 3 CRLR 132] Section 2632.19 lists events, characteristics, or circumstances that constitute a “substantial increase in the hazard insured against” for purposes of cancellation and/or nonrenewal of an automobile insurance policy.

Commissioner Quackenbush amended section 2632.19 in several ways; many of the changes were grammatical and nonsubstantive. Other changes, however, were substantive and were the focus of some controversy at an August 10 public hearing. For example, section 2632.19(c)(1)(A) now states that for purposes of nonrenewal, “the fact that the insured or principal or occasional driver of the insured vehicle has been assessed a total of three or more violation points under section 2632.13 within the preceding 36 months” is a “substantial increase.” For purposes of subsection 2632.19(c)(1)(A), an insurer may count two violation points for each accident in which, in accordance with section 2632.13, the insured or any principal or occasional driver of the insured vehicle was determined to be principally at fault and which resulted in bodily injury or in the death of any person. In bodily injury accidents not resulting in death, the total loss or damage caused by the accident must exceed $500. Prior to this rule change, insurers could cancel policies when a driver has accumulated three points in 36 months only when two of the points were within the past...
twelve months. Representatives of the Proposition 103 Enforcement Project testified that these changes will permit insurers to cancel or nonrenew (or — under a growing practice — cancel the policy and then offer a new policy at exorbitant rates) the policies of many drivers who commit only minor driving offenses.

Section 2632.19(b)(9) makes an insured's conviction of any alcohol-related offense specified in sections 23152, 23153, 23220, 23221, 23222, 23224, or 23226 of the Vehicle Code a "substantial increase in the hazard insured against." Although Commissioner Quackenbush said these changes are targeted at drunk drivers, the Proposition 103 Enforcement Project argued that they will impact many sober drivers who have a fender-bender and a minor ticket or two on their record.

The Commissioner also added new subsection 2632.19(b)(6) to state that the expiration of the driver's license of an insured is a "substantial increase in hazard insured against" justifying policy cancellation or nonrenewal, if the insured has not obtained a valid license prior to the time that the insurer's nonrenewal or cancellation of the policy becomes effective.

Criteria for Determining Whether a Consumer Complaint Is Justified

Enacted in 1990, section 12921.1 of the Insurance Code requires the Insurance Commissioner to establish a program to investigate complaints, respond to inquiries, and — when warranted — bring enforcement actions against insurers. Section 12921.1(a)(5) requires the Commissioner to specify guidelines relative to the public dissemination of complaint and enforcement information on individual insurers to consumers, including the ratio of complaints received to total policies in force, or premium dollars paid in a given line, or both.

This requirement of the public dissemination of information concerning consumer complaints raised concerns among insurers who felt that, because the information could have a significant economic impact on the insurance business, DOI should be required to give insurance companies notice of consumer complaints filed against them and the criteria used to determine whether a complaint is justified. In 1994, the legislature passed AB 2601 (Johnson) (Chapter 892, Statutes of 1994), which amended section 12921.1 of the Insurance Code to require the Insurance Commissioner to promulgate regulations setting forth the criteria that DOI will apply to determine if a complaint against a specifically named insurer is deemed to be justified prior to the public release of the complaint. AB 2601 also requires the Commissioner to provide notice to the insurer of any complaint against the insurer that the Commissioner has deemed to be justified at least 30 days prior to public release of a report. [14:4 CRLR 126]

In early 1998, in compliance with the 1994 law, DOI adopted section 2694, Title 10 of the CCR, to set forth the criteria it will apply to determine whether a complaint made against an insurer is justified. Under section 2694, a consumer complaint is deemed justified within the meaning of Insurance Code section 12921.1(b) when the Department determines that any of the following criteria apply: (1) a licensee's acts or omissions are in noncompliance with the provisions of the Insurance Code, the California Code of Regulations, or other applicable laws and/or regulations; (2) a licensee's acts or omissions contravene an approved rate filing or filings; (3) a licensee's acts or omissions unjustifiably contravene its own rules, policies, procedures, or guidelines; (4) a licensee's acts or omissions contravene or are inconsistent with a provision or provisions of the insurance policy, contract, bond, or other agreement entered into by the relevant parties; (5) a licensee has failed to respond reasonably to communications relating to a claim, benefit underwriting, or rating transaction, from a policyholder, insured, applicant, third party claimant, beneficiary, principal, or other party with a legitimate interest in the transaction such as a policyholder; or (6) specified facts surrounding the complaint against an insurer merit remedial action within the authority of the Commissioner.

DOI Releases Consumer Complaint Study

In September, the Governor signed SB 1948 (Sher) (Chapter 556, Statutes of 1998), which requires the Commissioner to release a consumer complaint study pursuant to Insurance Code section 12921.1 (see above) on or before July 1, 1999, and to put the study on DOI's Internet website (see LEGISLATION). In October, DOI released its consumer complaint study for automobile insurance and homeowners insurance covering the period of January 1, 1998 to June 30, 1998. DOI based the study on the criteria set forth in its regulation for determining justified complaints (see above). When DOI receives a complaint from a consumer, it is classified as either "justified," "unjustified," or a "question of fact." In its consumer complaint study, DOI ranked the 50 largest insurers according to their "justified complaint ratio," which is based on the number of justified complaints closed compared to the number of policies or exposures.

Among the fifty largest automobile insurers, the top three insurers were Wawanesa Mutual, American Economy, and 21st Century Casualty; each had a 0.0 justified complaint ratio. The bottom three insurers were Sterling Casualty (with a justified complaint ratio of 26.6), Superior (with a justified complaint ratio of 38.4), and TIG Specialty (with a justified complaint ratio of 52.1).

Among the fifty largest homeowners insurers, the top three insurers were USAA, USAA Casualty, and Associated Indemnity Corporation; each had a 0.0 justified complaint ratio. The bottom three insurers were State Farm Fire and Casualty (with a 14.9 justified complaint ratio), Five Star (with a 17.1 justified ratio), and Pacific Specialty (with a 41.1 justified complaint ratio).
The consumer complaint study is the first of such studies to be published by DOI since 1994, and the first published since Commissioner Quackenbush took office in 1995. After 1994’s AB 2601 (Johnson) required DOI to define the term “justified complaint” before complaint information could be disseminated to the public, DOI took the position that the consumer complaint study, which is based on each insurer’s “justified complaint ratio,” could not be conducted until DOI adopted regulations setting forth such criteria. And although DOI’s press releases accompanying the consumer complaint study noted that its October 1998 release is several months before the July 1999 deadline in SB 1948, it took DOI four years to define what constitutes a justified complaint with its adoption of section 2694, Title 10 of the CCR.

**Outgoing Board Appoints Knowles to Head California Earthquake Authority**

Following the 1994 Northridge Earthquake, which caused $12.5 billion in insured losses, most homeowners insurance companies—which were required by Insurance Code section 10081 to also offer earthquake protection along with homeowners’ policies—withdraw from the market or reduced the amount of earthquake insurance they offered to avoid the risk of another costly disaster. [15:2 CRLR 186; 15:14 CRLR 112; 14:4 CRLR 122] In 1995, Commissioner Quackenbush proposed the creation of the California Earthquake Authority (CEA), a publicly managed, privately funded entity that would provide earthquake insurance to consumers and encourage insurance companies to reenter the homeowners insurance market. In 1995, the legislature passed AB 13 (McDonal) (Chapter 944, Statutes of 1995), which created CEA, and AB 1366 (Knowles), which permitted insurers to pare back section 10081’s required earthquake coverage to “barebones” levels. [15:4 CRLR 222]

According to DOI and CEA’s supporters, the program helps spread the risk associated with earthquake losses by establishing a pool of $7.5 billion, financed largely by participating insurance companies and premiums from CEA policies, plus commitments from reinsurance companies and private investors. The insurers now participating in the CEA write a combined 71% of homeowners insurance in California. Under the program, customers submit their claims to the company that handles their policy, but the CEA actually pays the claim and assumes much of the risk. If an earthquake exhausts CEA’s resources, claims will be paid on a pro rata basis and policyholders could be assessed an additional 20% on top of their regular premiums.

CEA policies carry a 15% deductible, cap payments for personal property damages at $5,000, and allow $3,000 for living expenses. The CEA has identified 19 separate rating territories based on a risk assessment study it commissioned by a private structural engineering firm. The firm used computer modeling to estimate risk, using soil types, age of housing stock, construction materials, and foundation types, and produced a breakdown by ZIP code of more than 2,000 different rating zones which were eventually narrowed down to 19. Rates initially ranged from $1.15 per $1,000 of insured value to $5.25 per $1,000 of coverage. To ensure that insurance would be affordable in the highest-risk areas, CEA capped rates in those areas and raised them elsewhere.

Under AB 13, the CEA is governed by a three-member Board of Directors consisting of the Governor, the Treasurer, and the Insurance Commissioner, each of whom may name designees to serve as Board members in their place. The Speaker of the Assembly and the Chair of the Senate Rules Committee serve as non-voting, ex officio members of the Board, and may also name designees to serve in their place. The Board is advised by an advisory panel consisting of four members who represent insurance companies that are licensed to transact fire insurance in the state, two licensed insurance agents, one seismologist, one person with expertise in construction requirements and building codes, and two members of the public not connected with the insurance industry.

On December 17, less than three weeks before two of the CEA’s three Board members (Governor Wilson and Treasurer Fong) would leave office, the Board appointed former Assemblymember David Knowles as the agency’s executive director. The Board gave Knowles a four-year contract with a salary at $160,000 per year. Knowles was elected to the Assembly in 1990. In his first term, he served as minority whip; in his second term, he was appointed to serve as assistant Republican leader. In his third and final term, Knowles was appointed to chair the Assembly Insurance Committee; in 1995–96, Knowles authored several bills which helped bring the CEA into existence. After term limits forced Knowles to retire from the legislature in 1996, Commissioner Quackenbush asked Knowles to serve as his Deputy Commissioner for Policy, Research and Special Projects. In 1997, Knowles assumed the responsibilities of Chief Deputy Insurance Commissioner. As Chief Deputy, Knowles had oversight responsibility for DOI’s 1,100 employees and all aspects of the Department’s operations and policy development. As CEA’s executive director, Knowles will be responsible for running the day-to-day operations of the agency. Knowles replaces Greg Butler, also a former deputy for the Insurance Commissioner.

Opposition to Knowles’ appointment as CEA executive director was immediate. Critics argued that the Board’s appointment of Knowles was an abuse of lame-duck power, and that it would have been more appropriate for the Board to have allowed the incoming administration to make management decisions concerning the agency. Consumer advocates contended that Knowles’ close ties to the insurance industry make him a poor choice for the job, noting that Knowles collected more than $119,000 in campaign contributions from
insurance interests and took their side in numerous legislative battles with consumer advocates when he was in the Assembly. Supporters countered that Knowles' legislative experience and knowledge of the insurance industry make him uniquely qualified for the job, and will enable him to lower premiums for earthquake policies in the future. At this writing, Knowles is scheduled to begin his new job on January 4.

**CEA Adjusts Rates and Proposes to Offer New Coverage**

In late December, the CEA approved earthquake policy rate changes which will result in an average statewide rate reduction of about 4.5% for the CEA's basic policy. If approved by the Commissioner, this rate reduction will follow on the heels of an 11% reduction approved by Commissioner Quackenbush in November, which in turn followed a critical insurance battle with consumer advocates when he was in the Assembly. Supporters countered that Knowles' legislative experience and knowledge of the insurance industry make him uniquely qualified for the job, and will enable him to lower premiums for earthquake policies in the future. At this writing, Knowles is scheduled to begin his new job on January 4.

Effective January 1, 1995, Insurance Code section 1765.1 was modified to give the Commissioner prior approval of surplus line carriers. Section 1765.1 now requires surplus line brokers to use nonadmitted carriers which have been approved by the Commissioner and placed on the list of eligible surplus line carriers. This new statutory scheme renders obsolete DOI's previous "file and use" system in section 2174 et seq., Title 10 of the CCR, which permitted a surplus line broker to use a nonadmitted carrier once it had filed documents on the carrier with DOI. Thus, in January 1998, the Commissioner published notice of his intent to amend section 2174.1-.14, Title 10 of the CCR, to conform DOI's regulations to the new statutory scheme. Most of the Commissioner's regulatory changes delete now-obsolete and unnecessary sections of the regulatory scheme; however, some of the regulatory changes are substantive.

Insurance Code section 1765.1(c)(7) requires the nonadmitted insurer to provide DOI with "a certified copy of the most recent report of examination or an explanation if the report is not available"; new section 2174.1(a) defines the term "report of examination" to mean a report of examination by the insurer's domiciliary regulator listing the condition of the insurer at an "as of date" that is no later than five years from the date of submission. New section 2174.2(a) establishes a $4,500 fee for the initial submission for a carrier requesting to be approved by DOI; section 2174.2(b) sets a $2,250 annual renewal fee; section 2174.2(c) sets a $250 fee for updating financial documents, and a $35 fee for updating all other documents. New section 2174.3(a) implements section 1765.1's requirement that the Commissioner require, "at least annually, the submission of records and statements as are reasonably necessary to ensure that the requirements of this section are maintained" by setting forth the documents which must be submitted upon each annual renewal of the carrier's approval.

At this writing, DOI staff are preparing the rulemaking file on these regulatory changes for submission to OAL.

**Insurance Producer Licensing Working Group**

In March 1998, DOI convened an Insurance Producer Licensing Working Group to study the state's insurance licensing laws and recommend changes to the legislature and the Insurance Commissioner. DOI formed the Working Group in response to the introduction of five licensing bills in 1998 (AB 1887 (Keeley), AB 2164 (Wayne), SB 1447 (Burton), SB 1633 (Johnson), and SB 2169 (Lewis)). The bills' authors agreed not to move forward with their legislation until after the Working Group had concluded its study and offered final recommendations. DOI envisioned that the Working Group would complete its work and offer recommendations to the Commissioner and legislature by December 1. DOI intended that the Working Group try to reach a consensus in as many areas as possible, to enable DOI to sponsor omnibus licensing legislation during 1999-2000.

The Working Group held six meetings from June to August 1998. The sessions focused on credit insurance, rental car companies, and motor dealers, and specifically targeted insurance distribution and marketing methods. Missing its predicted deadline of December 1, DOI completed a draft summary report of its work and recommendations on December 23 (which is available on DOI's website), and—at this
writing—plans to meet again on January 14 to discuss the report, make additional changes (if needed), and then produce a final report during the first quarter of 1999.

The following summarizes recommendations made in the draft report in areas upon which the Working Group reached a consensus:

♦ **Credit Insurance.** Currently, a person transacting credit insurance must obtain and maintain a life agent license for credit life and disability and a property/casualty agent license for credit unemployment and property insurance, unless he/she is exempt from licensure. The law provides two licensure exemptions for credit insurance: Insurance Code section 1634(h) exempts employees of creditors (lenders) who collect information or enroll individuals in group master policies, provided that no commission is paid to the employee; and section 1635(i)(2) exempts an employee of a licensed property/casualty agent, whose employment is that of a salesperson, whose solicitation of insurance is limited to the quoting of an insurance premium, and who is paid no commission.

The Working Group determined that the sale of credit insurance is usually ancillary to the sale and financing of merchandise and, therefore, a level of licensure below full licensure would be appropriate. The Working Group reached a consensus that a specialized credit insurance license would be more suitable than what is currently required by statute. Specifically, the Working Group determined that an “organizational license,” similar to what is currently required of motor car dealers, would establish consumer safeguards and an appropriate level of licensure for those persons involved in the sale of credit insurance. Under an organizational license, individual employees would be exempt from licensure provided that their employer (retailer or other seller) obtains an organizational license from DOI. The employee would be named an “endorsee” at every place of employment and the employer would assume responsibility for training the employee and filing all related training materials with DOI. A licensure fee would be paid to DOI. Unlike the existing licensure exemptions, it would be permissible for the employee to be paid a commission, but only if the employee is authorized as a named “endorsee.”

♦ **Rental Car Companies.** Various states provide different schemes of licensure for the sale of insurance by rental companies; California law lacks a specific scheme for such sales. The Working Group agreed to the creation of an organizational license similar to the organizational license currently required of motor dealers and proposed for credit insurers. The Working Group stated that creation of an organizational license would protect consumers and provide an appropriate level of licensure for those persons involved in the sale of insurance products at a rental car company. For purposes of the organizational license, the term “rental car company” applies to the rental of both cars and trucks. Individual employees would be exempt from licensure provided that their employer obtains an organizational license from DOI. The employee would be named an “endorsee” on the license and would be required to be an “endorsee” at every place of employment. The employer would assume responsibility for training the employee and filing all related training materials with DOI.

♦ **Motor Car Dealers.** Under existing law, a motor car dealer holding an organizational property/casualty agent license may transact insurance only through an endorsee named on the organizational license (Insurance Code sections 1628, 1637, 1647, 1656, and 1661). Testimony received by the Working Group and DOI investigations suggested that most dealers are in compliance with these Insurance Code provisions. The Working Group reached a consensus that no change to current law is necessary.

♦ **Advertising and Mass Media.** While recognizing that insurance transactions are diverse and that different methods of advertising and mass media are utilized, the Working Group concluded that no change to current law is necessary. According to the Working Group, no problems arising from insurance-related advertising and mass media affecting consumer protection have been demonstrated. The Working Group also pointed out that DOI has regulatory jurisdiction to bring appropriate enforcement actions against producers or insurance companies whose advertising is in violation of the Insurance Code.

♦ **Internet.** The Working Group explored what changes, if any, to state law are needed with respect to Internet insurance sales. Current law requires any person or entity selling insurance in California via the Internet to be licensed to sell such insurance in the state of California. The Working Group concluded that Insurance Code section 1725.5 should be amended to require that agents and brokers display their license numbers on their websites. The Working Group also recommended that a licensee voluntarily place on its website a referral to DOI’s website, although this recommendation does not require legislative change.

**DOI Assists in Effort to Recover Unpaid Insurance Claims for Holocaust Victims**

During World War II, many Jewish families in Europe purchased life insurance policies as financial protection for loved ones who would survive the war. However, Nazi Germany did not preserve insurance policy documents, nor did it issue death certificates for Jews and countless untold others murdered in concentration camps during the Holocaust. As a result, many Holocaust victims and their heirs have been unable to collect on policies purchased over one-half century ago. Several class action lawsuits have been filed against large European insurance companies on behalf of Holocaust survivors to ensure that they receive payment on legitimate claims.

Several of the companies that are refusing to pay claims of Holocaust victims are licensed in California and, for the past year, Commissioner Quackenbush has worked with the National Association of Insurance Commissioners (NAIC) and the International Holocaust Commission to try to bring these companies “to the table” and persuade them to honor their contractual commitments. The Commissioner estimates that approximately 20,000 California residents are Holocaust survivors or the children of individuals who were among the six million killed by the Nazis during World War II.

DOI held several public hearings on the issue throughout 1997, and then joined a national class action lawsuit in
New York federal district court against 16 European insurance companies. On April 8, 1998, five large European insurance companies agreed to sign a memorandum of understanding (MOU) which commits them to establishing a process to investigate policies which insured victims of the Holocaust; consult with European government officials and the insurance industry; establish an international commission comprised of government authorities, insurers, and the World Jewish Restitution Organization and other interested parties; establish a just mechanism for resolution of unpaid claims of Holocaust victims; consult with governmental authorities to obtain appropriate exemption from regulatory actions and relevant legislation for insurers voluntarily participating in the process and work to resolve all pending litigation; and establish a fund to accomplish the foregoing and provide humanitarian relief to Holocaust Victims. Insurance regulators from five states (including California) have signed the MOU, and 34 others have agreed to sign it.

The MOU established the framework for the creation of the International Commission on Holocaust Era Insurance Claims (ICHEIC), which held its first meeting in New York on October 21 and appointed former U.S. Secretary of State Lawrence S. Eagleburger to serve as its chair. The State of Israel, international Jewish organizations, U.S. insurance commissioners (including Commissioner Quackenbush), and six representatives of the European insurance companies are represented on the ICHEIC, which will attempt to resolve all pending Holocaust era claims within two years.

The Commissioner's effort to deal with the Holocaust insurance issue culminated in the signing of SB 1530 (Hayden) by Governor Wilson on September 29 (see LEGISLATION).

Legislation

SB 1530 (Hayden), as amended August 27, allocates $4 million to DOI for the purpose of developing and implementing a coordinated approach to resolving outstanding claims of Holocaust victims. The bill authorizes DOI to use onsite teams and an oversight committee to provide for research and investigation into insurance policies and unpaid claims for losses arising from the activities of the Nazi-controlled German government or its allies for insurance policies issued before or during World War II by insurance companies who have affiliates or subsidiaries authorized to do business in California. SB 1530 directs DOI to cooperate with the NAIC and any other national or international entities involved with documenting or resolving Holocaust claims; work to recover information and records that will strengthen the claims of California residents; and report annually to the legislature on its progress in the identification and resolution of insurance claims of Holocaust survivors. The bill also requires the Insurance Commissioner to suspend the certificate of authority of any insurer that is failing to pay these claims. Any action to suspend a certificate of authority must be conducted in accordance with the Administrative Procedure Act; however, the Insurance Commissioner may issue an order of suspension before holding a hearing if he/she determines that it is necessary to protect the interests of Holocaust survivors. This bill took effect immediately as an urgency statute upon the Governor's signature on September 29 (Chapter 963, Statutes of 1998).

SB 1948 (Sher), as amended June 23, requires the Commissioner, on or before July 1, 1999, to prepare a written report that details complaint and enforcement information on individual insurers (see MAJOR PROJECTS). This bill also requires that no complaint information that has not first been provided to the insurer shall be included in the report. DOI must make the report available by mail to interested individuals upon written request, through its consumer toll-free telephone number, e-mail, and through its Internet website. The Governor signed this bill on September 17 (Chapter 556, Statutes of 1998).

SB 334 (Lewis). Under existing law, it is unlawful to knowingly cause or participate in a vehicular collision, or any other vehicular accident, for the purpose of presenting any false or fraudulent claim; any person who commits felony insurance fraud and has a prior felony conviction for insurance fraud must receive an additional two-year enhancement for each prior felony conviction. As amended January 20, this bill provides that any person who has two felony convictions for similar offenses shall receive a five-year enhancement in addition to the sentence for the underlying offense. This bill enacts a two-year enhancement for each person who suffers bodily injury as a result of a staged accident. The Governor signed this bill on July 18 (Chapter 189, Statutes of 1998).

AB 2270 (Oller), as amended May 12, allows an insurer to write a personal automobile liability, automobile physical damage, or automobile collision policy on drivers with trucks with a load capacity exceeding 1,500 pounds. The Governor signed AB 2270 on July 11 (Chapter 136, Statutes of 1998).

SB 1683 (Rosenthal and Burton), as amended July 20, requires the Commissioner to develop and provide for a brochure for consumers who are required to buy title insurance and to display the brochure on the Internet. The brochure must inform consumers that competing title insurers and underwritten title companies may offer different costs or services for the title insurance required in the transaction; must inform consumers about the potential availability of discounts in cases involving first-time buyers, short-term rates if a home is resold in less than a five-year period, concurrent rates if the company is providing both the homeowners’ and the lenders’ title insurance policies in the transaction, subdivision bulk rates if the property being purchased is in a new subdivision, refinancing discounts, short-term financing rates, and discounts that may be available in other special cases; and must encourage consumers to contact more than one title insurer or underwritten title company in order to compare costs and services.
DOI's brochure must also educate consumers about laws involving unlawful commissions and rebates associated with the placement or referral of title insurance, and encourage consumers to report to DOI, the Department of Real Estate, and to any other appropriate government agencies any suspected incidents of probable unlawful commissions or rebates subject to Article 6.5 of the Insurance Code (commencing with section 12414). Additionally, the brochure must include DOI's toll-free consumer assistance telephone number; and DOI must make one copy of the brochure available to a member of the public at no cost. The Governor signed SB 1683 on September 21 (Chapter 732, Statutes of 1998.)

**AB 2492 (Pringle).** Existing law governing title insurance authorizes the Insurance Commissioner to prescribe by regulation a statistical plan reasonably adapted to each of the title insurance rating systems in use in the state; and provides that the plan shall be used by each title insurer in the reporting of data required by the plan in order that the experience of all title insurance may be made available on an annual basis. However, no title insurer is required to record or report data on a system basis that is inconsistent with the rating system in use by it, and the Commissioner must designate one or more advisory organizations to, among other things, assist in the development of the plan.

AB 2492 provides that the plan shall be used by title insurers in reporting data required by the plan so that experience of all title insurers is available to the Commissioner on an annual basis; requires the Commissioner, through regulations, to prescribe the form and detail of the financial data to be submitted and the time period the data shall cover; and requires every licensed title insurer in the state to record and report data directly to the Commissioner, regardless of whether it is required to do so on a system basis that is inconsistent with the rating system in use by it. AB 2492 authorizes the Commissioner to use analytical input from an industry advisory organization to generate statistical information for use in reviewing and evaluating individual rate filings by title insurers.

Existing law makes it unlawful for a title insurer, controlled escrow company, or underwritten title company to pay certain commissions or make certain rebates in connection with the business of title insurance; and subjects any violator to a penalty of five times the amount of the unlawful commission or rebate, to be recovered by the Commissioner, in addition to any other penalty imposed by law. AB 2492 deletes from that penalty provision the reference to the recovery of additional penalties imposed by law; it also authorizes the Commissioner, in addition to or in lieu of any other applicable penalties, to issue an order, after a hearing, to restrict or suspend the certificate of authority of any title insurer or controlled escrow company or the license of any underwritten title company. The Governor signed AB 2492 on September 28 (Chapter 919, Statutes of 1998).

**SB 1555 (Rosenthal),** as amended August 24, provides for a 30-day cancellation period during which purchasers of credit insurance who request cancellation will be fully refunded any moneys paid, and also requires certain disclosures regarding bundled insurance policies. The Governor signed SB 1555 on September 17 (Chapter 585, Statutes of 1998).

**SB 266 (Rosenthal),** as amended August 10, provides that CEA policyholders who have retrofitted their homes to withstand earthquake shake damage according to specified standards shall enjoy a premium discount or credit of 5%, and authorizes the Authority's governing board to approve a larger credit or discount if it is actuarially sound. SB 266 also permits DOI's earthquake mediation program to remain operational until January 1, 2000. This bill was signed by the Governor on September 19 (Chapter 622, Statutes of 1998).

**SB 858 (Lewis),** as amended July 13, provides that premiums written by the CEA for earthquake insurance shall be attributed to the participating insurer that writes the underlying policy of residential property insurance for purposes of calculating market share for the FAIR Plan. Existing law establishes the California FAIR Plan Association, which is comprised of all licensed insurers that write property insurance in California; the purposes of the FAIR Plan are to assure availability and stability in the property insurance market, and to provide for the equitable apportionment among licensed insurers of the burdens of the plan. The Insurance Commissioner has the authority to designate the inner city and brush fire zones that will be eligible to be served by the FAIR Plan; this designation is generally tied to an unwillingness of insurers to voluntarily write insurance in these zones. This bill was signed by the Governor on September 21 (Chapter 688, Statutes of 1998).

**AB 1975 (Brewer),** as amended June 29, requires that the disclosure notice given by nonadmitted insurers and surplus line brokers to policyholders and applicants for insurance state that California maintains a list of eligible surplus line insurers approved by the Insurance Commissioner (see MAJOR PROJECTS), and that policyholders and applicants for insurance should ask their agent or broker if an insurer is on the list. This bill also distinguishes a surplus line broker from the more common and clearly defined term "broker." This bill was signed by the Governor on August 10 (Chapter 269, Statutes of 1998).

**SB 333 (Figueroa),** as amended June 10, adds certain state and local bonds and short-term notes that are rated by Moody's Investor Service, Inc. or Standard and Poor's Corporation to the list of permissible repositories for fiduciary funds received by licensed insurance agents. This bill was signed by the Governor on July 18 (Chapter 163, Statutes of 1998).

**SB 2051 (Costa),** as amended July 23, sets forth a procedure whereby a newly formed life or health insurer may invest according to general insurer investment guidelines, rather than the three-year restricted investment standards, if guaranteed by a "guaranteeing insurer" which has been doing business in the state for ten years or more, owned at least 50% of the newly formed insurer, has maintained a $500 million surplus over liabilities for at least three years, and is approved by the Insurance Commissioner. This bill was signed by the Governor on September 13 (Chapter 495, Statutes of 1998).

**SB 1413 (Knight),** as amended July 30, requires an insurance company to pay interest at the rate of 10% annually.
employers with between two and 50 employees to provide disability-income insurance policy. This bill was signed by the Governor on August 28 (Chapter 415, Statutes of 1998).

SB 1790 (Rosenthal), as amended July 15, allows small employers with between two and 50 employees to provide health coverage to their employees who work 20–29 hours per week on the same basis as their employees who work 30 or more-hours per week. This bill was signed by the Governor on August 28 (Chapter 418, Statutes of 1998).

AB 1621 (Figuroa), as amended August 27, requires certain health care service plan contracts and certain disability insurance policies issued, amended, renewed, or delivered on or after July 1, 1999, to cover reconstructive surgery, but excludes coverage for cosmetic surgery. The bill authorizes health care service plans, certain disability insurers, and the Medi-Cal program to utilize prior authorization and utilization review that may include denial of proposed surgery under specified circumstances. This bill was signed by the Governor on September 23 (Chapter 788, Statutes of 1998).

AB 399 (Gallegos), as amended July 17, would have provided for state implementation of the federal Health Insurance Portability and Accountability Act of 1997 (HIPAA). One of the major provisions of HIPAA was to ensure portability of health coverage, so that people moving from one job to another or from employment to unemployment are not denied coverage because they have a pre-existing condition. California is one of only a handful of states that did not enact a HIPAA conformance law in 1997. The bill would have defined the term “small employers,” for purposes of small employer insurance coverage, as those who employ at least one, but no more than 50, eligible employees; would have included self-employed individuals as small employers; and would have included self-employed individuals as eligible employees. Governor Wilson vetoed this bill on September 27, because it attempted to include self-employed individuals in the health insurance regulatory framework for small employer groups. The Governor stated that this provision “will upset the stability recently achieved in this once volatile market. The bill would distort this market by shifting higher risk individuals from the individual health insurance market to the small employer group market, thus increasing costs for all small employers.”

SB 593 (Rosenthal) would have redefined the term “small employer” for the purpose of small employer coverage consistent with the definition provided above in AB 399. On September 27, the Governor vetoed this bill for the same reason he vetoed AB 399, as both relate to the subject of including self-employed individuals in the health insurance regulatory framework for small employer groups.

AB 1869 (Cardoza), as amended July 20, requires the Commissioner to set up Insurance Disaster Assessment Teams to promptly respond to disasters, assess the damage, and make reports to the Commissioner, the legislature, and the public.

The goal of section 1861.02 was to end so-called “territorial rating” or “redlining,” whereby insurers base auto premiums primarily on the ZIP code in which the driver resides rather than his/her relevant driving safety and experience record.

AB 1869 was signed by the Governor on September 15 (Chapter 510, Statutes of 1998).

Litigation

On June 23, 1998, in the consolidated cases of Spanish Speaking Citizens’ Foundation, Inc., et al. v. Chuck Quackenbush, No. 796071-6, and Proposition 103 Enforcement Project v. Chuck Quackenbush, No. 796082–2, Alameda County Superior Court Judge Henry E. Needham, Jr. issued a writ of mandate prohibiting the Commissioner from enforcing section 2632.8, Title 10 of the CCR, a key provision of the Department’s so-called “auto rating factors” which implement Insurance Code section 1861.02(a).

Section 1861.02 was added by Proposition 103, and requires automobile insurance premiums to be based on the following factors: “in decreasing order of importance”: (1) the insured’s driving safety record, (2) the number of miles he/she drives annually, (3) the number of years of driving experience the insured has had, and (4) “such other factors as the commissioner may adopt by regulation that have a substantial relationship to the risk of loss. The regulations shall set forth the respective weight to be given each factor in determining automobile rates and premiums.” The goal of section 1861.02 was to end so-called “territorial rating” or “redlining,” whereby insurers base auto premiums primarily on the ZIP code in which the driver resides rather than his/her relevant driving safety and experience record.

To implement section 1861.02(a), Commissioner Garamendi adopted, and Commissioner Quackenbush amended in 1997, section 2632.1 et seq., Title 10 of the CCR, which defines the three “mandatory factors” and sets forth 16 “optional factors” (including gender, marital status, academic standing, and “relative claims frequency”—which shall reflect where the insured vehicle is garaged”) which insurers may consider in setting auto premiums. Section 2632.8, Title 10 of the CCR, sets forth a complex formula whereby insurers calculate the “weight” to be accorded to each mandatory factor; the section also permits insurers to calculate “one [weight] for all the optional factors...taken together as a single factor weight.” The cities of Los Angeles, San Francisco, and Oakland, together with two consumer groups and one civil rights organization filed suit to challenge the validity of section 2632.8 as being inconsistent with the language of section 1861.02 and with Proposition 103’s goal to end discriminatory “territorial rating.” The groups alleged that, under Commissioner Quackenbush’s regulations, a young male driver who moves from San Luis Obispo to South Central Los Angeles would see his annual premium for minimum coverage skyrocket from $1,706 to $7,844.

On June 23, Judge Needham issued a decision agreeing with the petitioners and enjoining Commissioner Quackenbush from enforcing section 2632.8(a). “Contrary to the requirement of Insurance Code section 1861.02(a)(4),
Rosenfield and the Proposition 103 Enforcement Project argued that such a scheme fails to "further the purposes" of the insurer's rollback obligation by the full amount of the premiums paid by policyholders, thus leaving the full amount of such excess premiums available for refund to policyholders... It is clear that the effect of section 769.2 is to shift the ultimate payment and burden of the taxes and commissions paid on excess premiums... from the insurers and/or the State of California and/or the agents and brokers to the policyholders.” Because “the overall purpose of Proposition 103 is to require that premiums be set at the lowest possible amount consistent with the constitutional prohibition against confiscatory rates,... the relevant question is whether section 769.2 furthers this purpose. It does not...” The Second District thus reversed the judgment of the trial court and voided section 769.2 as “constitutionally invalid as an act in excess of the Legislature’s powers.” On September 16, the California Supreme Court denied the industry’s petition for review of the Second District’s decision.

In Arthur Andersen LLP v. Superior Court (Charles Quackenbush, Real Party in Interest), 67 Cal. App. 4th 1481 (Nov. 24, 1998), the Second District Court of Appeal decided an interesting legal issue regarding the liability of certified public accountants to the Insurance Commissioner for negligently-prepared audits of insurance companies.

Arthur Andersen LLP prepared an audit of the 1991 financial statements of Cal-American Insurance Company, and issued the standard three-paragraph audit report indicating that Cal-American’s financial statements “present fairly, in all material respects, the financial position of Cal-American and the results of its operations and its cash flows in conformity with generally accepted accounting principles (GAAP)” —in other words, Andersen gave Cal-American a “clean” or “unqualified” opinion. As required by Insurance Code section 900.2, Andersen’s audit report was filed with the Insurance Commissioner, who has the statutory responsibility of monitoring insurance companies to ensure their ability to pay insurance claims. The Commissioner’s staff reviewed Andersen’s audit report and Cal-American’s financial statements, and allegedly relied on Andersen’s unqualified audit opinion to accept that Cal-American’s financial statements fairly presented its financial position in accordance with GAAP.

According to the court, “[i]n actual fact, Cal-American was insolvent by a considerable margin. Its financial statements materially misrepresented its true financial condition by failing to disclose that a significant portion of Cal-American’s assets were encumbered as a result of related party transactions.” By the time the Insurance Commissioner discovered Cal-American’s truly insolvent condition many months later, Cal-American had “allegedly descended deeper into insolvency, and had become unable to pay an increased amount of insurance claims.” The Commissioner promptly instituted receivership proceedings in Orange County, which were later converted into liquidation proceedings. The Commissioner thereafter filed the instant action alleging professional negligence and negligent misrepresentation against Andersen, contending that he would have acted sooner and reduced the losses caused by Cal-American’s deepening insolvency if Andersen’s audit report had been accurate.

Relying on Bily v. Arthur Young & Company, 3 Cal. 4th 370 (1992), Andersen moved for summary judgment,
contending that it owed no duty whatever to the interests repre-
resented by the Insurance Commissioner. In Bily, the Califor-
nia Supreme Court reversed a longstanding doctrine holding
a CPA liable for negligence not solely to his/her audit client
but also to third parties who “reasonably and foreseeably”
rely on an audited financial statements prepared by the CPA,
and instead held (interpreting Restatement Second of Torts
section 552) that CPA liability to non-client third parties for
negligent misrepresentation is limited to “those persons who
act in reliance upon those misrepresentations in a transaction
which the auditor intended to influence....An issue is thus
posed as to whether the Insurance Commissioner, with whom
an audit report must be filed by statute, is within the universe
of permissible plaintiffs defined in Bily.” The trial court de-
nied Andersen’s motion, and Andersen petitioned for a writ
of mandate to overturn the trial court’s order.

On appeal, the Second District affirmed the trial court’s
ruling. “Under Bily and Restatement 552, an auditor is liable
for negligent misrepresentation in an audit report to the per-
sons who the auditor expects will rely on the report. Profes-
sionals in the business of auditing insurance companies, such
as [Andersen], are deemed familiar with the statutes govern-
ing insurance company audits. Hence the Insurance Commissi-
on is within the universe of persons to whom an auditor
in [Andersen’s] position may be liable for negligent misrep-
resentation in an audit report pursuant to Restatement 552 and
Bily.”

The Second District also rejected Andersen’s argument that
the Insurance Commissioner, in seeking to marshal the
assets of an insolvent insurer on behalf of the policy-buy-
ing public, acts merely as an ordinary receiver and there-
fore can enforce only those duties owing directly to the in-
surance company. Andersen contended that it must be found
to have caused damage to the value of Cal-American before
it can be held liable for a negligent audit; since Cal-Ameri-
can was already insolvent at the time of the audit, the value
of Cal-American to its owners could not be further dam-
aged and therefore that Insurance Commissioner has no right
to recover. The court disagreed: “When carrying out his
statutory regulatory duty of monitoring the claims-paying
ability of an insurer, the Insurance Commissioner is not act-
ing to protect the investment of the insurance company’s
owners, but instead to protect the policy-buying public. The
Insurance Commissioner hence represents far broader in-
teresst than those typically represented by an ordinary re-
ceiver, whose potential claims are limited to those of the
company in receivership.”

The court clarified that it was deciding only the legal is-
ssue of whether Andersen owed a duty to the Commissioner
under Bily, and not whether Andersen had been negligent in its
audit of Cal-American’s financial statements. The Second Dis-
trict affirmed the trial court’s denial of Andersen’s motion for
summary judgment, and rejected Andersen’s petition for writ
of mandate. On December 14, the Second District denied
Andersen’s petition for rehearing; Andersen has petitioned the
California Supreme Court for review of the Second District’s
decision.

In 20th Century Insurance Company v. Charles
Quackenbush, 64 Cal.App.4th 135 (May 22, 1998), the First
District Court of Appeal upheld a superior court decision sus-
taining the Commissioner’s demurrer to a petition for writ of
mandate filed against him by 20th Century. The insurer
claimed that the Commissioner exceeded his statutory author-
ity when he publicly disseminated his response to a
homeowner’s inquiry concerning the application of the stat-
ute of limitations to claims for damages caused by the 1994
Northridge earthquake.

On April 28, 1997, the Commissioner replied by letter to
an inquiry from attorneys for homeowner Barbara Shugar,
requesting his interpretation and opinion regarding the appli-
cable limitations period for submitting earthquake damage
claims arising out of the 1994 Northridge earthquake. Shugar,
who was insured by 20th Century, sued the insurance com-
pany after it denied her earthquake claim as untimely. In its
response, the Commissioner noted that he had received many
complaints from consumers whose insurers had denied claims
for damage which homeowners discovered more than one year
after the Northridge quake; in his letter and in a subsequent
press release, the Commissioner stated that he had “ruled in
favor of homeowners hit by the 1994 Northridge earthquake
by issuing a legal opinion.” Subsequently, 20th Century sued
the Commissioner, alleging he had exceeded his statutory
authority by responding to Shugar’s inquiry and by publiciz-
ing that response. The trial court sustained the Commissioner’s
demurrer to 20th Century’s petition; the insurer appealed.

On appeal, the court stated that the Commissioner’s pub-
lication of his response to Shugar’s inquiry did not violate
the Insurance Code, which expressly authorizes the Commis-
sioner to respond to complaints and inquiries by members of
the public concerning the handling of insurance claims, and
grants the Commissioner broad discretionary power to dis-
seminate information to the public concerning insurance
matters. The court also rejected 20th Century’s claim that the
Commissioner had exercised the forbidden power to adjudic-
cate claims because, although his press release contained le-
gal rhetoric, the Commissioner’s statements are not legally
binding on the court in which Shugar’s litigation is pending,
and 20th Century is not precluded from fully litigating in that
forum or in litigation with any other policyholder the ques-
tion whether an insurance claim is timely and whether the
Commissioner’s letter to Shugar is admissible for any pur-
pose. The court also dispensed with the insurer’s claim that
the Commissioner’s letter and press release violate the con-
stitutional principle of separation of powers by usurping the
power of the judiciary to interpret a statute enacted by the
legislature. According to the court, the separation of powers
theory fails because the Commissioner did not attempt to
enforce his interpretation of the applicable limitations period
for submitting earthquake damage claims in any binding ad-
judication, nor had he promulgated any departmental regula-
tion purporting to implement his interpretation. Furthermore,
because the Commissioner did not promulgate any regula-
tions, the issuance of the letter did not fall under the purview
of the Administrative Procedure Act for judicial review.