

**AMERICAN PROPERTY CASUALTY INSURANCE ASSOCIATION RESPONSE TO DISB REQUEST
FOR COMMENTS ON DRAFT DATA CALL RELATED TO UNINTENTIONAL BIAS
IN PERSONAL AUTOMOBILE INSURANCE**

January 20, 2023

To: Phillip Barlow, Associate Commissioner for Insurance Phillip.barlow@dc.gov.

The American Property Casualty Insurance Association (APCIA) represents over 1,200 member companies that provide insurance coverage and reinsurance in every state and around the world. APCIA members write 67.3% of the private passenger auto insurance in D.C. and have a long-term commitment to the welfare of the District and our customers. We appreciate the Department of Insurance, Securities and Banking (DISB) sharing a draft of the proposed data for review and comment.

We would like to point out that the questions that we raised in our August 22, 2022, comment letter, such as legislative authority, self-evaluation privilege as well as specific concerns about data collection have yet to be addressed. We attach a copy of those comments for your review and look forward to your response. Some of our comments in this document may reiterate concerns expressed previously.

We would like to emphasize that we want to be at the table going forward prior to any further DISB actions and recommendations; however, the proposed data call continues to raise many questions and fundamental issues for our members that we would like to share with DISB. In that spirit, we offer these comments. We look forward to further review and meeting with DISB regarding the data call after DISB has had time to review our detailed comments.

Overall Comments

As was discussed on the recent conference call, the proposed qualitative questions seek to learn what kind of testing for “bias” and “unfair discrimination” are being done by insurers today without defining them. While “unfair discrimination” is already defined in statute, “bias” is not, and the department will need to clarify how they define those terms, and the legal basis for mandating data disclosures to determine compliance with a standard, in this case “bias”, that is not in the law and is contrary to the standard in the law, before the questions can be answered.

The fundamental statutory standard with which insurers must comply and that regulators must enforce is embodied in the “excessive, inadequate, unfairly discriminatory” standard in Section 31-2703. The definition of each element of the rating standard set forth in Section 31-2703 requires projecting the risk of loss. In fact, the universally accepted purpose of the “unfairly discriminatory” element of the rating standard is to prohibit rates that treat people with similar risk profiles differently. All three components of the rating standard are tied by statute to the risk of loss – namely, past and prospective loss experience and expenses, the nature of the hazards (physical and catastrophe); and the rarity or peculiar characteristics of the risks presented among others. DC ST § 31-2703(b)

DISB review of unfair discrimination for private passenger auto must also consider that the existing legal standard includes review for solvency purposes and adequacy purposes. This is why it is imperative that DISB consider comparative risk as a reason for accepting, declining, and rating policies, otherwise the results in the report would be misleading, or even damaging to the market. The data template calls for a significant

amount of information that many insurers are unlikely to have or may not be able to capture electronically. The only way to get some of this would be to have some one knowledgeable review quotes individually to determine and input the responses. This would be a huge expenditure of time, resources and impose costs on insurers that would, ultimately, be borne by DC consumers. Quotes are always preliminary in nature and are generated from a variety of sources that exponentially increases the complexity of both data collection and analysis.

DISB has stated that whatever information that is submitted as part of this data call is submitted under the confidentiality provisions of the market conduct statutes. Can DISB confirm that ORCAA will be considered an extension of DISB and held to those confidentiality standards? We request a copy of the agreement in place with ORCAA. Data security is of critical importance; DISB must provide clear information about what security protocols DISB and ORCAA will use to protect the data. That includes disclosing how the data will be used, stored, and disposed of after the examinations. That should be clarified and included in any final data request.

And finally, what form will the final report take? DISB stated on its website that it "will not publish or otherwise disclose any company specific data collected as part of this initiative"; will this also extend to the company-specific answers to the qualitative questions? Furthermore, will the final report be a single, commingled examination report or individual carrier-level reports for each company identified on the data call?

Questions asked by the Department:

Additional data elements that should be considered for the data call, and the reasons why.

Suggestion: What is the symbol factor associated with the covered vehicle?

An APCA member reviewed some of the filed Vehicle Symbol factors that highlights the challenge of collecting a vehicle symbol factor (or candidly any single rating factor) across multiple companies – it is used differently for each company and there are multiple factors that combine to vary the rates based on the vehicle covered. At a minimum you may wish to collect factors by coverage. We saw in a short review that not all use ISO symbols, so collecting just the symbols themselves might be collecting Apples and Oranges. We believe collecting VINs and then having DISB do a mapping to ISO symbols is the most equalized version of a vehicle symbol.

The quick review revealed:

- *One company files vehicle symbol factors that vary by coverage (BI, PD, COMP, COLL, UM, PIP/Med), as well as additional factors such as a luxury vehicle factor that varies by age of the driver.*
- *Another company has multiple different factors with multiple coverage deviations.*
 - o *Model Year factor that varies for BIPD, COMP, COLL, PIP*
 - o *Insurance Rating Group (GRG/Comp, DRG/Coll) factors that vary by Deductible level for COMP and COLL*
 - o *Insurance Rating Group (VSD/vehicle safety discount, LRG/BIPD)*
- *Another company has a rate symbol factor as well as a model year factor*

- *Rate Symbol Factor varies for BI, PD, COMP, COLL, MED*
- *Model Year Factor varies for BI PD COMP COLL MED*
- *Another company has a Liability symbol factor, a PIP/UM/UIM symbol factor, a model year factor for Comp and Coll, and Physical Damage symbol factors (Comp, Coll), as well as a high valued vehicle adjustment factor*

Whether any data elements identified in the draft data call may be difficult to provide or comply with, and the reasons why.

It is likely that many, if not most of the data elements in the proposed template are not captured by insurer systems and could only be captured via a manual review of quote or customer records. Manual data capture would result in an exponential increase in the cost of compliance with such a data call.

Whether there are other data elements that may be substituted for elements listed in the draft data call.

Whether clarification is needed for any of the data call elements or questions.

- *See below*

Any of the insurance groups listed, or not included in the list, above; and

The time periods provided to the insurance groups to respond to the data call.

We have heard from our carriers that 90 days at a minimum would be required to complete given the amount of data as well as the complexity of the data being drawn from multiple departments.

In addition, our carriers are asking that a dedicated person be available to answer questions.

Thank you for clarifying that the cost of the analysis with ORCAA will be funded by the Department.

DISB Data Call: Qualitative Questions

Overall Comment on Qualitative Questions from APCA: *How will investigating companies' internal protocols on policies and procedures and collecting internal studies help answer the questions as outlined around consumer harm? How does questioning data collection practices around quotes help answer the questions as outlined?*

Section 1: Existing bias assessment policies and procedures

DISB would like to understand existing policies and procedures related to testing for bias or Unfair Discrimination.

1. What principles or standards related to bias and Unfair Discrimination is your company committed to meeting. (Max 500 words).

Comment: *This question is too broad, it should be limited to rating and underwriting models used in private passenger auto, which is the focus of this inquiry. The question asks about standards related to "bias" and "Unfair Discrimination;" but what type of bias?*

The D.C. Unfair Insurance Trade Practices statute (§ 31-2231.11, § 31-2231.13) defines “unfair discrimination”, is this the definition that should be used in companies’ responses? If it is not, then serious legal issues are presented by the proposed study.

2. Who within your company decides what needs to be reviewed or assessed for bias or Unfair Discrimination? (Max 300 words)

Comment: Again, this question is too broad, it should be limited to personal auto insurance and unfair discrimination. Also, is the department looking for the names of specific individuals, job titles or departments?

3. Does your company do any analysis or testing related to bias or Unfair Discrimination in the provision quotes, underwriting, premium/pricing, or loss ratios? If so, please describe. (Max 500 words).

Comment: The question asks about standards related to “bias” and “Unfair Discrimination;” but what type of bias? The D.C. Unfair Insurance Trade Practices statute (§ 31-2231.11, § 31-2231.13) defines “unfair discrimination”, this is the definition that should be used in companies’ responses.

The following questions apply if you answered “Yes” to (3)

4. What dimensions of potential bias do you consider in this analysis or testing (e.g., race/ethnicity, other)?

5. What methodologies do you use, if any, to determine race or other demographic information in connection with this testing? (Max 300 words)

6. Describe the specific analyses you conduct to measure differences in quotes, underwriting outcomes, premiums, or loss ratios between demographic groups. (Max 500 words)

7. How do you interpret the results? Specifically, how do you decide whether quotes, underwriting decisions, premiums, or loss ratios are permissible? (Max 500 words)

8. How do you mitigate problems once they have been discovered? (Max 500 words)

Comment: We are unable to comment on questions 4-8 until the comments on questions 1-3 are addressed.

Section 2: Supporting artifacts

In this section DISB requests documentation from actual instances of the governance and testing procedures described in Section 1. Examples of documentation could include reports, memoranda, presentations, or records from meetings.

1. Please submit documentation from one or more instances of: Assessment of potential bias or Unfair Discrimination in the provision of quotes, underwriting, premium/pricing, or loss ratios. (Your response to this question should list the instances for which you are submitting documentation. For each instance, please provide a brief overall summary of what was assessed, and brief description of each corresponding document submitted.)

Comment: This question asks for specific examples of testing for things that have not been properly defined, or that are not consistent with the legislated standards, as pointed out in earlier responses.

Section 3: Information to accompany your data call submission

In this section DISB requests two documents that explain and contextualize the data you submitted in response to the data call.

1. Data dictionary. Please provide a document that defines and explains the structure of the following variables: [specific variables t.b.d. pending comments on the data call spreadsheet]
2. Gap report. If you were unable to respond to any part(s) of the data call, please explain what is missing and why these records and/or variables could not be provided.

No Comment on Section 3

Section 4: Information about data collected on auto insurance quotes

DISB would like to understand if and how you collect information about consumer quotes.

1. Do you maintain a computerized quoting system for auto insurance policies available either directly to the public or available to your authorized agents/brokers? If so, please provide a brief description, including whether you collect and analyze data from the system for quotes and whether the analysis includes quotes that do not turn into applications or policies.

Comment: It is not clear what is being asked in this question. Does the department want to know if companies are analyzing this data for potential “bias” and “unfair discrimination,” or for any business purpose?

2. Do you otherwise collect data on quotes for auto insurance policies from your company? If so, please describe the source and whether it includes data on quotes that do not result in applications or policies.

Comment: This question is asking the same thing as question 1?

3. Do you collect any data that compares auto insurance policy quotes on policies from your company to quotes from other insurers? If so, please describe the source and whether it includes data on quotes that do not result in application or policies.

Comment: This question asks if the company collects examples of quotes from its competitors and seems beyond the scope of this inquiry.

Excel Data Template Comments

General Questions Responses

- The data call will require a large amount of data to be transferred from the carrier to the department. We recommend the department establish a means for insurance carriers to securely transfer the substantial amounts of data requested, since this is not likely to be accomplished via e-mailing a spreadsheet.

One suggestion from a member would be for DISB to provide a cloud-to-cloud transfer where a vendor creates a storage bucket in Amazon or Google Cloud and provides secure access to save the files is preferred vs a secure FTP site that can be constrained by hardware hosting the transfer that could become bound up by large amounts of data being transferred.

- *During the January 9, 2022, conference call with the industry, DISB clarified that this data call applies to private passenger auto only, not commercial, motorcycle, recreational vehicle auto insurance, or any line of business.*

Tab One: Quote data: Comments

- Quotes are routinely provided for multiple vehicles and drivers. How should driver and vehicle information be aggregated? For example:
 - *Gender is requested: do we display the gender of the Primary Named Insured or the gender of all the drivers on the quote?*
 - *For vehicles, symbols are requested, do we display the symbol factors of the 1st listed vehicle or all the vehicles? Some companies assign different symbol factors for the bodily injury/property damage and a different symbol for the physical damage coverages. How should those be listed.? See above for more details.*
 - *Incorporating all information will make the data file either longer with a vehicle/driver level or wider with columns for each vehicle and driver.*
 - *Similar with vehicle for deductible information – what if only 1 vehicle on the quote has Collision coverage, or vehicles have different deductibles?*
 - *For address, does that mean the vehicle garaging address or the insureds mailing address?*
- The template asks specifically for personally identifiable information, the handling and protection of which is subject to federal (and DC) privacy regulations.
 - *What assurances will the department and its consultant provide insurers that their customers data will be protected?*
 - *What protocols will be followed to ensure compliance with privacy requirements?*
- Thank you for clarifying that the quotes requested are for Washington DC residents only but note that is not specified anywhere in the documents.
- Some of the requested questions do not consider what is required by DC code such as every auto is required to carry certain minimum FR limits for BI and PD making lines 16 & 17 applications unnecessary.
- What is considered a “quote” for the purposes of this data call? For example:
 - What is an “initiated” quote?
 - Is it a completed quote with a premium displayed?
 - Or an inquiry to price a new policy, using the last-viewed coverage selections, payment selections, and premium offered.

- Quotes are often modified, such as adjusting limits and deductibles or including or excluding a particular discount or coverage. Do all versions need to be provided? **Based on the conference call and the discussion, it appeared that there was consensus that the final quote with pricing for required coverage and last generated should be provided.**
- Are the values displayed for categorical variables the only values expected with the exact wording in the Notes columns? For example:
 - We strongly recommend that this information should not be collected as it does not provide any information. For example, under “quote progress” there are three levels provided in the notes section, DISB has stated that it is looking to find out from quote data "Is a certain group being quoted higher prices?" If this is the case, DISB has no need to collect quotes that are abandoned before a price is provided. We recommend only collecting quotes that got to the point of premium being displayed.
- Gender calls for 1 for female and 0 for male, how do we handle non-binary if a company captures non-binary? This is an example where an insurer may capture a different value electronically (such as M/F) and require manual review or complex programming to translate to a 0/1 format.
- DISB asks for comments regarding loss history and driving record, but no explanation is provided about what kind of information you are looking for. Is it the number of citations? Type of citations? Number of claims? Dollar amount of claims? Many times, carriers are not independently collecting loss history or driving records for quotes when prospective consumers are shopping for coverage.
- It is important to note that quote data is often stored differently than bound policy data or not available at all (depending on the source of the quote). Further, quote data with additional data elements (quote variation #1, quote variation #2, and so on) adds to the difficulty and complexity of data gathering.
- Channel: Recommend that we expand the categorical list to isolate the impact of assumptions made by third parties.
 - Direct - Company's website, app, or phone representative
 - Direct - External website, app, or phone representative
 - Captive Agent
 - Independent Agent/Broker Using Internal System
 - Independent Agent/Broker Using Comparative Rater
- Coverage Selections: Internal quoting systems offer multiple quote packages and often display simultaneously. Consumers and agents often can iterate quotes too.
- Multiple coverages are missing that might increase total premium and should be added:
 - Rental Reimbursement
 - Roadside Service
 - Custom Parts and Equipment
 - Loan Repayment aka Gap coverage

- For BI and PD, how would DISB like for us to indicate a CSL policy?
- PIP in DC is sold in three separate coverages as defined by § 31–2404 and should be broken apart to those separate coverages:
 - Medical and Rehabilitation Expenses
 - Funeral Benefits
 - Work Loss
- COLL & COMP do not have limits, rather they have deductibles, and those deductibles can be different by coverage
- Quoted Total Premium and Quoted Premium Mode:
 - Does DISB want premiums to be inclusive or exclusive of installment fees?
- Several variables should be collected for the named insured as well as all additional rated drivers. Recommend including fields for up to 10 drivers:
 - First Name
 - Last Name
 - Date of birth
 - Years Licensed
 - Loss History
 - Driving Record
 - Gender
 - Marital Status
- For both Loss History and Driving record, it would be particularly challenging to group these variables into categorical variables. Could they be separated into multiple numerical variables with counts of different violation types and insurance claims? For example,
 - Major Violation Count (with a supplied list of violations that fall into this and other groupings)
 - Minor Violation Count
 - At Fault Accidents

Tab Two: Application data: Comments

- Who is considered an “applicant”? Is it a customer with a completed quote? Is it for new business only, excluding renewals? Or only policies in force? **We recommend that the application data should only be collected at time of new business, if at all.** Renewal policies are sent out prior to the renewal date. The cost of the renewal policy will only vary from the prior term if there is an overall rate increase by the carrier, losses, or changes made by the consumer. These renewals are subject to market conduct and if a policy is non-renewed they are subject to the rules stated in the insurance code for non-renewal and are reviewed by market conduct exams by DISB. This would lessen the amount of data. In additional renewal policies and the data provided is being collected under TAB #3.

- What is meant by “offer”? There is a lot of customer preference involved in an “offer” and an initial quote/offer is not indicative of what options the company makes available to each customer.
- This tab duplicates information on the quote template. Since the application process follows the quote process, that information does not need to be collected a second time. We also reiterate the questions and concerns identified in the quotes section. *SEE LINES 27-35*
- “UW tier and UW Standardized Tier”: Underwriting tiers are calculated differently across competitors. Some have a few tiers, some have dozens. How does DISB anticipate that insurers should map tiers to the standardized categories?
- Should DISB collect information on discounts offered, for example if a discount for a telematics or “usage-based insurance” program?
- The questions around what the highest limits offered per applicant are confusing. In theory a company would have all limits and deductibles available to an applicant. Renewals are sent a notice for their new term premium at current coverage levels; they can make a change to their coverage but there are not different coverages specifically offered. Is DISB trying to determine if coverage options were limited for the applicant?
- New Business applications are inherently different from Renewals and come from different data sources. Not all elements listed in the Applications data make sense for Renewals. There often is not another application, the policy simply auto renews. Do renewals need to be considered at all in this analysis?
- **Line 36:** Applications re-quoted at max limits and \$1000 deductibles: Systems capture quoted premium at the limits and deductibles displayed. To re-quote or price those applications at different limits and deductibles would be a tedious and highly time intensive process. Companies should not be expected to re-price application data at new assumptions (limits, deductibles, paid-in-full vs installments, etc.). The market conduct statute (§31-1403(b)) says that insurers must provide access to data but does not obligate insurers to create new data records. Under what authority is this new data requested?

It appeared during the conference call there is a consensus that the data collection should only reflect real data not hypotheticals.

When DISB is asking for policy/rejection counts and premium sums, by what segments and variables should the data be provided? *SEE LINE 23*

Tab Three: Loss Data Comments

- Is the template looking for loss data on those that asked for quotes or applied for insurance? If so, an insurer would not have access to this level of loss detail for anyone they had not insured previously.
- Time period: Is DISB looking for any policy effective within the time frame or is it any policy with an effective date within the time frame?

- This tab duplicates information on the quote template. Since the application process follows the quote process, that information does not need to be collected a second time. We also reiterate the questions and concerns identified in the quotes section.
- If you are asking for loss data for existing customers, what is the evaluation date of the losses? Do you want them as of a fixed date (such as December 31, 2022) or as of when the insurer pulls the data? Producing this data for individual insureds (such as drivers on an auto policy) would be extremely difficult and could be more easily accomplished on the policy level.
- If there are multiple losses on a policy, should those be aggregated together? Also, some companies do not split the losses between vehicles or coverage, again exponential adding to the complexity and cost of compliance.
- If the premium DISB refers to is earned premium, not written premium, is DISB looking for earned premium on a policy year or on a calendar year basis? Should earned premium be inclusive of installment fees or other billing fees (late fees, non-sufficient funds charges)? Should earned premium be net of bad debt?
- ULAE is “unallocated” loss adjustment expense, so these costs are not allocated to a specific policy or claim file. ALAE or “allocated loss expense” is allocated to a specific file, but it is not clear why either the paid or reserved amount is pertinent to this analysis? We also wonder how we would do this on policies that have multiple losses during the data call experience period.
- This tab asks for total “total dollar amount of premiums” for the policy, but it is not clear if that means for the policy year, or over a longer period?
- Additional records are required for mid-term endorsements to the selected coverages and limits/deductibles, insured drivers, and insured vehicles.
- The “scope of data request” says, “one row of data per policy.” However, policy start, and policy end date are variables. Is the intent to collect this across the policy terms or looking for one row of data per policy and term?
- The loss experience period requested (January 1, 2019-January 1, 2021) was incredibly volatile, including: 1) the earliest months of the COVID-19 pandemic, where frequencies were extremely low; 2) the DC moratorium; and 3) unprecedented inflation that drove repair costs up. If the department wishes to use a two-year period, our recommendation would be to use 2018 and 2019, or 2019 and 2022. If a one-year period is sufficient, 2019 makes the most sense.

Conclusion:

There remain fundamental and unanswered questions about the feasibility of the proposed data collection, the protection of the data and the legal standard for embarking on this data collection and according to which the data will be analyzed. We believe a far better approach is to further engage in dialogue and analyze data already provided and available to DISB for example through rate filings to determine if the prices charged are consistent with the standards established in the DC insurance code. Thanks again for the

opportunity to comment and the recent conference call to begin answering questions on the data sheet. We look forward to continuing to work with the Department.

Please contact us with any questions.

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