August 22, 2022

Commissioner Karima Woods
District of Columbia Department of Insurance, Securities, and Banking
1050 First St NE #801
Washington, DC 20002

Re: Request for Comment—Unintentional Bias in Automobile Insurance

Introduction

The Consumer Federation of America (CFA)[1] and Center for Economic Justice (CEJ)[2] submit these comments on unintentional bias in private passenger auto insurance, in response to the Department of Insurance, Securities, and Banking (DISB)'s request for written comments following the June 29th public hearing. Our response is based on our many years of experience researching and analyzing insurance markets, advocating for affordable auto insurance rates, and combatting unfair discrimination.

We applaud the DISB's investigation of unintentional bias in auto insurance and, in particular, their plan to collect a range of data that goes beyond premium data in order to more effectively probe the impact of bias in the insurance marketplace. Below we address the four areas of DISB interest outlined in the July 19, 2022 Request for Comment.

As a preliminary comment, we suggest that DISB define "unintentional bias" so stakeholders can understand what outcomes will be considered to qualify as unintentional bias. We further suggest that DISB utilize the definitions of disparate intent, proxy discrimination and disparate impact (as set out in slides 5 to 10 of the attached presentation by CEJ) to identify disproportionate outcomes on the basis of race for purposes of identifying outcomes that qualify as "unintentional bias." Based on the initial data collection by DISB – including, for

[1] CFA is an association of over 250 national, state, and local non-profit consumer organizations founded in 1968 to advance the consumer interest through research, advocacy, and education. We advocate on behalf of consumers throughout the United States, with a special focus on protecting low and moderate income consumers. For decades CFA worked on insurance policy under the direction of J. Robert Hunter, an actuary, former Federal Insurance Administrator, former Texas Insurance Commissioner and now CFA's Insurance Director Emeritus. CFA's current Director of Insurance, Douglas Heller, is a member of the U.S. Department of the Treasury's Federal Advisory Committee on Insurance (FACI) and a Public Member of the California Automobile Assigned Risk Plan Advisory Board. CFA's Research and Advocacy Associate Michael DeLong is a member of the Nevada Division of Insurance's Property and Casualty Advisory Committee and is also a Funded Consumer Representative with the National Association of Insurance Commissioners (NAIC).
[2] CEJ is an advocacy and education center dedicated to representing the interests of low-income and minority consumers as a class on economic justice issues. CEJ's Executive Director Birny Birnbaum is a nationally acclaimed expert on insurance availability, data, and ratemaking issues, as well as a former Associate Commissioner for Policy and Research, and former Chief Economist at the Texas Department of Insurance and Chief Economist at the Office of Public Insurance Counsel.

example, whether loss data is included, there may be no way to initially distinguish between proxy discrimination and disparate impact outcomes.

As a further preliminary comment, we suggest DISB collect transaction-level detail data on quotes, policies and claims for several reasons. First, transaction data is as easy or easier than summarized data for insurers to report as the transaction data requires less processing and programming than summary data reports. Second, transaction data is less prone to errors in reporting because less programming is required, and errors in data are easier to spot. Third, transaction data provides for far more robust data analysis by DISB, whether for data quality, completeness or unintentional bias. Transaction data permits the addition of inferred racial characteristics, thereby permitting robust analysis of disproportionate outcomes for communities of color and the reasons for such outcomes. Fourth, transaction data reporting allows for easer reporting of quotes and application data that did not result in a policy by asking insurers to simply report all application data and indicate whether the quote resulted in issuance of a policy. Fifth, transaction data will reveal if certain groups of consumers are systematically funneled towards the higher-premium affiliates within an insurance group.

1. Potential Outcomes the Review Will Investigate

Each of the four outcome data points identified will contribute to an understanding of bias in the marketplace. We provide a few comments about these four and suggest two additional outcome data points that the Department should collect.

a. **Quotes ($)**. These data are critically important to include for at least two reasons. First, absent data on applications / quotes that did not result in a policy, there is no way to assess whether pricing may disproportionately impact communities of color through high premiums. Limiting any analysis to policies issued excludes all consumers who, because of insurer pricing, are unable to afford insurance or for whom, competitive insurer options are limited. Without the quote data regulators would not, for example, have any data that might include the estimated 19% of DC residents who are uninsured.[3] Second, the quote/application data will allow DISB to determine whether insurers' marketing efforts – including big data-driven micro-targeting of consumers – are systematically excluding communities of color. As mentioned during the recent call, because of insurers' access to massive amounts of personal consumer information in real time, traditional underwriting has moved into insurers' marketing activities. Absent data on quotes and applications, there is no way to identify marketing practices that systematically and disproportionately harm communities of color.
b. **Underwriting Decision.** Historically, underwriting has been understood to be the decision by the insurer to accept or decline a risk. Insurers now rarely decline a risk because of greater freedom in pricing – an insurer can simply charge a very high

[3] "One in Eight Drivers Uninsured: $13 Billion Spent in 2016 to Protect Against Uninsured and Underinsured Drivers." Insurance Research Council. March 22, 2021. Available at https://www.insurance-research.org/sites/default/files/downloads/UM%20NR%20032221.pdf.

premium to effectively decline an applicant instead of issuing an adverse underwriting decision. While instances of insurers actually declining coverage may exist, they are likely to be rare. On the other hand, underwriting may result in limitations on coverage offered in ways that systematically harm communities of color. Consequently, we urge that any data collection related to underwriting include not just outright declinations, but any limits on coverage offered.

c. **Premium.** This is one of the core consumer outcomes needed to assess disproportionate outcomes for communities of color.

d. **Loss Ratio (%).** Loss ratio can be calculated from premium and loss data provided in transaction reporting. Collection of loss ratio as a separate data element suggests summary reporting, which is limited for the reasons set out above. While important, for a number of reasons, it is important to point out that loss ratio is limited to the outcomes of policies actually issues. As such, loss ratio cannot identify whether communities of color are disproportionately excluded from coverage by virtue of price or underwriting. Collecting <u>loss data</u> is essential to ensure that the investigation is able to distinguish between fair pricing tools directly connected with risk of loss, proxy discrimination that is both actuarially unsound and counter to public policy, and disparate impacts that occur when risk-related factors lead to outcomes that conflict with certain public policy objectives. While it is not stated, we suspect that the expectation is that this loss ratio would be based on incurred losses. We agree that an incurred loss ratio measure will be an important data point and we suggest the following two related outcomes as well. It is important to note that, if DISB requires transaction-detail reporting, incurred and paid loss ratios and loss adjustment expense (DCCE) ratios can be calculated from the data and need not be separately reported by insurers, thereby eliminating another potential source of error.

e. **Paid Loss Ratio.** Collecting data that focuses on paid losses will help to determine if there is any unintended bias in the reserving and/or claims payment practices of insurers. Such a bias may contribute to higher indicated rates for protected classes than are reasonable.

f. **Defense and Cost Containment Expense Ratio.** Collecting DCCE data will help to determine if there is any unintended bias in the cost containment practices of insurers. Such a bias may contribute to higher indicated rates for protected classes than are reasonable.

2. Proposed Underwriting and Rating Factors Not Considered Reflective of Unintentional Bias

It is unclear why DISB wants to preclude any pricing factors absent the analysis of outcomes based on race. While our proposed definitions of disparate intent, proxy discrimination and disparate impact are all grounded in cost-based pricing, there is no basis to assume that any pricing factor has no disparate impact. It may well turn out that there are numerous pricing factors that are actuarially sound, not proxies for protected classes, have limited or no disparate impact or represent a reasonable tradeoff between pricing accuracy and impact on communities of color. But there is no need to decide that any rating factors meet any of these criteria *a priori* and in the absence of data analysis. Even if the pricing factor is actuarially sound and fair, it may be that communities of color have different access to those factors or opportunities. For example, we know that policing is more intense in communities of color, as evidenced by U.S. Department of Justice investigations into racial bias in policing, with the result that even commonly accepted pricing factors, like driving record, can reflect and perpetuate historic discrimination in policing.

Further, it is not sufficient to account for a few pricing factors for purposes of distinguishing whether a pricing is correlated to race or other protected class characteristics. All the pricing factors should be included in transaction-detail reporting to allow for a comprehensive analysis of "unintentional bias" of both the individual pricing factors and the pricing model in aggregate. Transaction detail reporting permits more granular analysis within pricing factors. For example, how is information on the driving record or loss history factors collected? With transaction reporting, each factor can be reported at the specific value used for pricing. For example, instead of simply identifying a good or bad driving record, transaction data can provide for identification of the values / contents of the pricing factor for a particular consumer and then allow for meaningful examination of proxy discrimination and disparate impact. at-fault accidents versus major violations versus minor violations.

While a system of rating that draws upon the motor vehicle record of drivers is rooted in personal responsibility and the preference for premium setting that signals the benefit of risk reduction, there are serious allegations of unfairness in the enforcement of moving violations that should be considered in assessment of unintentional bias. It has been widely acknowledged, for example, that Black residents are more likely than white residents to be cited for minor violations. It may also be the case that some groups are more likely than others to have major violations reduced to minor violations or fault in an accident may more likely be attributed to one group than another even when the facts are significantly similar. We do not *know* these possibilities to be true, but we suspect they could be. As such, it would be a missed opportunity to ignore the available insights that would come from breaking down the driving record factor into its constituent parts. Such analysis is not feasible with summary reporting and provides further justification for transaction reporting.

We also want to draw DISB's attention to a variety of pricing or consumer characteristics that raise concern for racial bias.

Geographic territory within the District. While territorial rating is not permitted, insurers may, through marketing and underwriting, make insurance less available in certain neighborhoods. Consequently, this factor should be included in any analysis of potential bias.

Credit-Based Insurance Scores. It is important to assess the extent to which insurers' heavy reliance on credit history leads to higher premiums for and reduced availability of auto insurance for people of color. The legacy of structural racism that continues to impact access to credit in America for people of color must be considered when seeking to assess unintended bias in the market.

Education level. data from the 2018 American Community Survey indicates that 33.9% of white Americans have a bachelor's degree or higher, while only 22% of Black Americans do.[4] When insurers charge less educated drivers higher rates, that burden disproportionately affects Black drivers.

Job/occupation. 40.4% of white Americans are employed in management, business, arts, and sciences. Only 29.9% of Black Americans are employed in those areas. By contrast, 24.5% of Black Americans are employed in service occupations while only 16.0% of white Americans are. Insurers' preference for applicants in higher wage and professional occupations results in higher costs for people of color who are less likely to have the preferred job titles.[5]

Homeownership status. 69.6% of white Americans own their homes while only 41.4% of Black Americans own their homes. [6] Reduced auto insurance rates for homeowners and higher rates for renters also increase the cost of insurance for Black drivers and other people of color.

Other pricing/underwriting factors raising concern are consumer lifetime value and propensity for fraud scores.

3. Factors That Are Both a Protected Class and Comply With Actuarial Standard of Practice #12

As with our response to question 2, we disagree with any approach that prior to any data collection and analysis – *a priori* -- starts with a conclusion about the fairness or lack of fairness of any pricing factor. Further, any such *a priori* decisions will needlessly complicate data collection and analysis.

4. Proposed Criteria To Be Evaluated For Bias

We agree that race/ethnicity is the right framework for this initial investigation into unintended biases in the auto insurance market. We suggest that, in addition to the strategies discussed at the public hearing and seeking data from other District government agencies, DISB order insurers to provide data on the race and ethnicity of their customers and prospective customers to the extent they maintain it. While it is presumed that these data are generally not shared with the underwriting, rating, and claims handling departments of insurance companies, we believe that many companies' marketing divisions have extensive customer data that includes race and ethnicity that could potentially be aligned with the quotes, underwriting decisions, premiums, loss ratio data, and any additional policy level data you might collect. While there are reasonably effective means by which DISB could conduct an analysis without precise race and ethnicity information about each policyholder and prospect, it would further strengthen the findings if this more precise data were included in the analysis.

Conclusion

Please contact us at mdelong@consumerfed.org if you have any questions or would like additional information.