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Associate Commissioner Philip Barlow
District of Columbia Department of Insurance, Securities & Banking

Re: Market Conduct Examination Draft Report – Evaluating Unintentional Bias in Private Passenger Automobile Insurance

Via electronic mail: philip.barlow@dc.gov

Dear Commissioner Barlow,

Legal Aid DC¹ submits the following comments in response to the District of Columbia’s Department of Insurance, Securities & Banking (“DISB”) draft report (“DISB report”) on unintentional bias in private passenger automobile insurance. Legal Aid is deeply concerned with the findings of the report because it confirms our client’s experiences that automobile insurance companies have discriminatory underwriting policies that predominantly impact marginalized people in our client community. These DC residents live at or below 200% of the federal poverty level. Due to where our clients are situated socio-economically, they are directly affected by harmful private and public policy choices across almost all areas of their lives, which keeps them in poverty. As such, we implore DISB to build upon its research and make statutory and regulatory changes to eliminate the “Black/white premium gap.”

DISB’s report shines a light on what many in our client community know all too well – they are confined in an economic and political system that leaves them disenfranchised regardless of how hard they work or how many jobs they hold.² As long as the “Black/white premium gap” identified by the DISB report remains,³ auto insurers in DC will

¹ Legal Aid DC is the oldest and largest general civil legal services program in the District of Columbia. The largest part of our work is comprised of individual representation in housing, domestic violence/family, public benefits, and consumer law. We also work on immigration law matters and help individuals with the collateral consequences of their involvement with the criminal legal system. From the experiences of our clients, we identify opportunities for court and law reform, public policy advocacy, and systemic litigation. For more information, visit www.LegalAidDC.org.

² See Earl Ofari Hutchinson, *The Myth of Black Capitalism*, New Edition (2024).

³ DC Department of Insurance, Securities, and Banking, Report on Market Conduct Examination, Evaluating Unintentional Bias in Private Passenger Automobile Insurance,

continue to profit from consumers who pay more because of proxies for race used in automobile insurance rate determinations.

In order to further identify and analyze the causes of the Black/white premium gap, Legal Aid urges DISB to consider these additional factors in the next phase of its analysis for the final report:

- DISB should obtain more data on the actual occurrence of fatal and non-fatal accidents in DC by race, not just the number of claims filed with insurers. White people in DC can often afford to pay for repairs without filing a claim, but many Black people are cost-prohibited from doing so. As a result, Black residents are more likely to file claims and, consequently, to receive higher premiums and higher occurrences of reported accident rates in an insurer's system.
- DISB should explore further the impact of payment modes and other discounts related to factors that are proxies for wealth, such as homeownership and educational level,⁴ and specifically how those discounts and payment modes can lead to lower premium rates for consumers with more assets. While the DISB report observed consumers have the option of paying the entire premium in advance,⁵ it did not state that, in many cases, the insurer would reduce the premium payment amount due to paying the entire amount upfront. DISB should collect data on whether premium rates are being reduced solely based on the ability to pay in advance. If they are, in effect, any consumer with the ability to pay their entire premium in a lump sum will pay less for their premium regardless of their driving history. In DC, that means white drivers can pay less expensive premiums simply because they have more access to wealth.⁶
- DISB should consider the implications of the national data on car crashes. This data further demonstrates why race, or racial proxies are an imprecise measurement for

Covering the Period from January 1, 2019 through December 31, 2021, https://disb.dc.gov/sites/default/files/dc/sites/disb/page_content/attachments/Unintentional Bias report - v.2 draft.pdf at 5.

⁴ *Id.* at 14 (Discounts and payment modes were not analyzed even though both are proxies for wealth).

⁵ *Id.* at 15).

⁶ See Erica William, DC Fiscal Policy Institute, DC's Extreme Wealth Concentration Exacerbates Racial Inequality, Limits Economic Opportunity (Oct. 20, 2022), <https://www.dcfpi.org/all/dcs-extreme-wealth-concentration-exacerbates-racial-inequality-limits-economic-opportunity/>.

determining a driver's premium. While Black drivers may file more claims, national data shows that non-Black drivers are the most likely to cause deadly crashes. National data shows that of the 43,230 traffic fatalities in 2021, white people accounted for 50 percent, while Black or African American people accounted for 17 percent and Hispanic or Latino people accounted for 16 percent.⁷ Further, the National Center for Statistics and Analysis shows that the offending drivers of traffic fatalities are statistically more likely to be Hispanic, American Indian, or White than any other race.⁸

- DISB should investigate how quotes are determined and whether zip codes are a primary factor. DISB's report found that "quote price gaps mirror actual premium gaps by race,"⁹ meaning among DC drivers, there is also a "Black/white quote gap." Further analyzing how quotes are determined may help DISB determine the causes of the premium gap.

Each of these suggestions is included to clarify and deepen the analysis of the DISB report. We hope these suggestions allow DISB to investigate and report on the cause of the racial gap further and enable it to work towards resolving the issue.

⁷ U.S. Dep't of Transportation, National Highway Traffic Safety Administration 2021 Data, June 2024, <https://crashstats.nhtsa.dot.gov/Api/Public/Publication/813572> - :::text=In 2021 there were 26,465,accounted for 17 percent each; "The most prevalent racial or ethnic group for the United States was the White alone non-Hispanic population at 57.8%. This decreased from 63.7% in 2010. The Hispanic or Latino population was the second-largest racial or ethnic group, comprising 18.7% of the total population. The Black or African American alone non-Hispanic population was the third-largest group at 12.1%." United States Census Bureau, 2020 U.S. Population More Racially and Ethnically Diverse Than Measured in 2010, <https://www.census.gov/library/stories/2021/08/2020-united-states-population-more-racially-ethnically-diverse-than-2010.html> - :::text=Figure 1)%3A-.The most prevalent racial or ethnic group for the United,18.7%25 of the total population.

⁸ G3 Help Me, Demographics Most At Risk For Car Accidents <https://www.g3helpme.com/blog/demographics-most-at-risk-for-car-accidents> .

⁹ DC Department of Insurance, Securities, and Banking, Report on Market Conduct Examination, Evaluating Unintentional Bias in Private Passenger Automobile Insurance, Covering the Period from January 1, 2019 through December 31, 2021, [https://disb.dc.gov/sites/default/files/dc/sites/disb/page_content/attachments/Unintentional Bias report - v.2 draft.pdf](https://disb.dc.gov/sites/default/files/dc/sites/disb/page_content/attachments/Unintentional%20Bias%20report%20-%20v.2%20draft.pdf) at 15.

DC Law and Policies Should Prohibit Insurers from Perpetuating Racial and Class Inequality

We appreciate that DISB is willing to consider regulatory change,¹⁰ and while we hope that there will be another opportunity to discuss our statutory and regulatory change recommendations at length, we offer some of our recommendations in these comments because they may assist with DISB’s report analysis and we believe that the “Black/white premium gap” should be addressed as soon as possible.

First, DISB should expand the traits protected by D.C.’s anti-discrimination in auto insurance laws. Expanding the protected characteristics will ensure that auto insurers do not intentionally or unintentionally target marginalized residents. Second, the Attorney General’s Office (OAG) should enforce the anti-discrimination provisions for the District and the Office of the People’s Counsel should represent individuals. We would welcome the opportunity to discuss a legislative proposal in more detail but below are some examples of how and where the D.C. Code could be amended to advance the priorities we have discussed in our comments.

- D.C. Code § 31–2703. Making of rates.
 - Add the following language to subsections (a) and (f)(1): “or based on any protected traits provided in Unit A of Chapter 14 of Title 2 or due to a consumer’s zip code, consumer report, education level, status as a homeowner or renter, or immigrant status.”
 - In subsection (i), the Office of the People’s Counsel (“OPC”) and the Office of the Attorney General should enforce the anti-discrimination provisions in auto insurance for individuals and the District, respectively. It is unclear to Legal Aid if the OPC has represented any consumers for a complaint of discrimination in auto insurance, but we support the OPC doing so. See D.C. Code § 34–804.

- D.C. Code § 31–2409. Consumer protection.

¹⁰ See Unintentional Bias Report Transmittal Letter DC Department of Insurance, Securities, and Banking, Report on Market Conduct Examination (May 14, 2024); Evaluating Unintentional Bias in Private Passenger Automobile Insurance, Covering the Period from January 1, 2019 through December 31, 2021, https://disb.dc.gov/sites/default/files/dc/sites/disb/page_content/attachments/Unintentional_Bias_report_-_v.2_draft.pdf at 15.

- Create a new subsection (g) that says, “Protected traits. Insurers are prohibited from inquiring about a consumer’s protected traits provided in Unit A of Chapter 14 of Title 2 or a consumer’s zip code, consumer report, education level, status as a homeowner or renter, or immigrant status when determining costs of insurance coverage.”

In addition to strengthening the language and enforcement of D.C.’s existing anti-discrimination in insurance laws, DISB should explore creating a subsidy program for residents who receive assistance such as SNAP, TANF, or SSDI. A subsidy would allow certain low-income drivers to have a portion of their auto insurance costs paid for by the District. The subsidy would close the “Black/white premium gap” and make auto insurance more affordable for low income consumers who need access to a vehicle in order to work and for their family needs.

Conclusion

Thank you for considering our comments. Legal Aid strongly encourages DISB to seize this opportunity to create equity in auto insurance rate making using our recommendations. We look forward to working with DISB, and other advocates, to ensure that marginalized residents are not subjected to discrimination as consumers of automobile insurance in the District.

If you have any questions, we would be happy to clarify or provide further details on any of these comments. Please feel free to contact us at jjenkins@legalaiddc.org or stassisa@legalaiddc.org.