American Property Casualty Insurance Association

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REBUTTAL COMMENTS OF
AMERICAN PROPERTY CASUALTY INSURANCE ASSOCIATION
IN CONNECTION WITH DRAFT MARKET CONDUCT EXAMINATION REPORT
EVALUATING UNINTENTIONAL BIAS IN PRIVATE PASSENGER AUTOMOBILE INSURANCE
JULY 12, 2024

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 72.9 percent 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)'s process and procedures in reviewing the draft report and are pleased to provide the following points of rebuttal to several of the commenters.

We would like to note that the draft market conduct examination report *Evaluating Unintentional Bias in Private Passenger Automobile Insurance* (Report)'s **undisputable finding is that premiums reflect losses.** Accordingly, we urge DISB to work with highway safety and insurance groups including the Insurance Institute for Highway Safety, the Coalition Against Insurance Fraud, the National Insurance Crime Bureau, and federal and D.C. transportation and safety agencies to improve safety and lower loss costs for all drivers, especially those with the highest losses.

Consumer Federation of America (CFA)

CFA appears to misunderstand the fundamentals of basic economics, insurance and its regulation. The Report did not find bias in pricing as the Report showed that premiums correspond to losses. The Department receives and reviews analyses of exposure and losses from insurers that justify their rates. As far as we are aware the Department has neither found, nor reported, discriminatory pricing from the industry in its rate filing reviews. The approved rate filings contain rating variables with a demonstrated relationship to risk and expected losses.

CFA's comments ignore the simple fact that insurance premiums are expected to and, in fact, do reflect claims costs. There has been no evidence here or previously provided to support the assertion that premiums do not reflect losses. To the contrary, there is plentiful evidence (in the form of approved rate filings and the undisputed findings of the Department's report) of full compliance with law and applicable actuarial standards of practice as more fully discussed in prior comments by APCIA and American Academy of Actuaries. Only in the third from the end paragraph, does CFA discuss the core finding documented by the DISB, that any differences in premiums reflect differences in losses.

CFA appears to believe that the cost of a product should have no relationship to the cost of producing it. As the report states "From the actuarial perspective, this means Black drivers are less profitable as a group than the other groups, because although their premiums are high (relative to white drivers), their losses are even higher (relative to white drivers)." The report also states that

“Black drivers’ average losses are 2.38 times that of white drivers” and that the loss ratio for Blacks is 60% while for whites it is 36%. Black drivers are paying less than the corresponding losses.

CFA’s likewise misunderstands the fundamentals of insurance, which require that premium must correspond to losses. Similarly, CFA references the old 2017 ProPublica refuted “study” which also missed half of the picture: losses drive rates and premiums. The relationship of losses and premiums protect both consumers and insurance company solvency: rates cannot be excessive, inadequate, or unfairly discriminatory. This has been validated by various regulator studies in the last few decades. Factors such as credit scores have also been proven time and time again to correspond to losses. Additionally, as already stated, insurance company filings with the Department must show which factors are used in pricing and how they correspond to losses.

However, there is one point of agreement, discussed in the third from the end paragraph, the value of further analysis of the true underlying causes, such as comparatively poor infrastructure. In view of the findings of the report, as our comments indicate, we believe that this would be the most fruitful way forward so that everyone, including higher risk drivers, can have more affordable insurance and more importantly, we can save lives and prevent injuries as well.

Legal Aid DC

We much appreciate the work that Legal Aid DC does to protect the legal rights of persons in the District. However, the Legal Aid DC comments suffer from similar misunderstandings as discussed above with regard to CFA.

As the Report finds, Black drivers are paying less than their corresponding losses. To stay financially sound, insurance companies have to charge a premium corresponding to the risk. This is captured in fundamentals of actuarial science and insurance regulations: rates cannot be excessive, inadequate, or unfairly discriminatory. As we stated previously, according to the NAIC’s Report on Profitability by Line by State in 2022[1], over a 10-year period (2013-2022), insurers’ cost of claims and expenses in D.C. were $102.4 for every $100 of premium. The higher loss costs for Black insureds compared to other races is perhaps the most difficult question that arises from the Report and should be addressed more broadly than through insurance pricing. It would be more beneficial for consumers, and have a more impactful outcome, to investigate and address societal and infrastructure issues (e.g., road conditions, street lighting, public transport, traffic density/congestion, visibility, installing guardrails or rumble strips, adding turn lanes at intersections, improving traffic signal phasing, converting intersections to roundabouts, providing/improving facilities for pedestrians and cyclists) to help lower the frequency and cost of claims that premiums reflect.

More importantly, Legal Aid DC apparently does not appreciate that insurers do not collect and cannot use factors such as race in rating and underwriting. Indeed, their recommendations to reduce legally permissible factors that have repeatedly demonstrated to predict risk, will make insurance premiums less accurate and less fair for all, as they reduce and distort the link between

[1] The most recent version of NAIC’s *Report on Profitability by Line by State in 2022* was published in March 2024.

costs and price. Aside from the consequences for consumers and insurer solvency, eliminating factors predictive of risk will result in undue reliance on only a few factors, including traffic law violations, which have themselves sometimes been criticized.

Generally, the valid historic economic and societal disparities raised in the letter, which are not insurance product pricing issues, cannot be addressed by removing the link between the cost and price of auto insurance products. Historically in the private insurance space, decoupling premium and losses results in adverse selection, less accurate pricing, and higher premiums for low risk drivers. Over time this has the effect of reducing the pool of premium-paying insureds, which leads to insurer solvency and insurance availability challenges.

Another example of Legal Aid DC's misunderstanding of insurance products is reflected in the comment that "White people in D.C. 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." Again, if true, this raises issues related to historic economic and societal disparities, not insurance pricing issues. Insurers are supposed to collect premiums to pay for losses. When drivers pay for their own claims, the cost of those claims cannot be reflected in their premiums. It is not unusual for policyholders to select policy options (e.g., higher deductibles) whereby the policyholder assumes a greater share of any loss, and perhaps fully absorbing the cost of smaller claims. Because the frequency of claims and losses paid by insurers is smaller, the premium will generally be smaller. In other words, the premium is fair as it reflects actual cost to insurers. This should not be construed as evidence of bias in pricing against low-income individuals.

Legal Aid DC also states that "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, and specifically how those discounts and payment modes can lead to lower premium rates for consumers with more assets." If insurers bill and collect several payments, the corresponding additional expenses for these activities are higher than a premium paid in full as one payment.

Legal Aid DC recommends that DISB examine the frequency of fatal crashes, alleging that "national data shows that non-Black drivers are the most likely to cause deadly crashes." Legal Aid states that "National data shows that of the 43,320 traffic fatalities in 2021, white people accounted for 50 percent, while Black or African American people accounted for 17 percent and Hipanic or Latino people accounted for 16%." According to the US Census Bureau, whites accounted for 57.8% of the population in 2020, Blacks/African Americans 12.1% and Latino/Hispanics 18.7%. Hence, according to the statistics presented by Legal Aid, it is whites who are actually less likely to be involved in fatal traffic accidents relative to their proportion of the population, whereas Blacks/African Americans are overrepresented. Again, any such disparities may relate to the fact that generally more minorities live in congested urban areas, in addition to any impact from historical economic and social disparities, and not to the fundamentals of insurance pricing. Even if we accept the statistics on which Legal Aid relies as valid, insurers collect premium and claim/loss data as the basis of the rates they file for review by the Department and charge. Which drivers may contribute more to deadly crashes nationally is not a pricing feature in insurance and it is outside the regulatory requirement that rates correspond to the risk and expected costs.

Legal Aid DC proposes subsidies that are in addition to the differences between losses and premium that the DISB report found: “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.” As the DISB report indicates, there is already a form of subsidy as the premiums currently charged to Black drivers do not approximate their related losses. The difference is made up in part by lower risk premium payers. If the D.C. Government decides to provide formal subsidies to some drivers, any subsidies should be provided with government funds and be transparent to everyone, rather than hiding them in the insurance mechanism with negative consequences for both insurers and lower risk consumers.

There are, however, points of agreement that we wish to emphasize. Again, the most beneficial way forward is to examine why the losses are occurring in order to reduce claims and losses which are reflected in what insurers need to collect in premiums. Such an approach would increase safety for District residents and would be beneficial to consumers and businesses alike.

Conclusion

The comments in this letter are intended to supplement and not to modify or replace our previous comments. We do wish to emphasize again, and there actually is some agreement on this, that the best way forward to reducing losses and premiums for all is to address the underlying losses and cost drivers that are ultimately paid for by consumers. Any approach that requires premiums to ignore losses would not only be inconsistent with statute and actuarial standards, but (as history proves) such an approach can be expected to increase premiums for lower risks in order to subsidize risks that are associated with more claims and losses. Additionally, less accurate pricing would negatively impact the financial condition of insurers and as such may also impact market availability. Instead, we continue to urge a focus on underlying costs drivers as the best way forward to benefit all D.C. consumers.

Please contact us with any questions.

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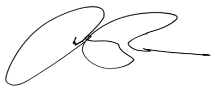

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