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Phillip Barlow
Associate Commissioner
D.C. Department of Insurance, Securities & Banking
1050 First Street, NE Suite 801
Washington, DC 20002

RE: NAMIC Comments—DISB Request for Comment—*Report on Market Conduct Examination: "Evaluating Unintentional Bias in Private Passenger Automobile Insurance"*

Associate Commissioner Barlow,

The National Association of Mutual Insurance Companies (NAMIC) appreciates the opportunity to provide comments about the draft report on evaluating unintentional bias in private passenger automobile insurance policies in the District of Columbia.

NAMIC is the largest property and casualty insurance trade association in the country, with nearly 1,500 local, regional, and national member companies who write more than two-thirds of the U.S. private passenger auto insurance market and over $750 million direct written premium in the District of Columbia.

NAMIC and our members believe firmly in the fair treatment of all policyholders. Mutual insurance companies are built on the notions of community and inclusivity, and the mutual model has a long and proud history of service to minority communities. NAMIC and our members are adamantly opposed to discrimination based on race and unfair discrimination in general, and we support legislative policies to prevent these practices, many of which are already established in the D.C. Insurance Code.

We share the D.C. Department of Insurance, Securities and Banking ("Department") commitment to consumers in the District, and appreciate the transparency with which the *Report on Market Conduct Examination: Evaluating Unintentional Bias in Private Passenger Automobile Insurance ("*report") was developed, as well as the provision of multiple opportunities for comment by all interested stakeholders. We believe the collaborative spirit displayed over the last several years as this project has unfolded led to a more well-informed product, and we hope that continues as the Department engages in any similar future efforts.

Overall Findings

The draft report's initial finding is that inferred Black drivers pay 1.46 times more premium than inferred white drivers, while representing 2.38 times the average loss costs. As the report acknowledges, "the race gap is mirrored – in fact, magnified – in actual losses; so, while inferred Black drivers pay higher premiums they represent higher costs to insurers." From an actuarial perspective this shows that inferred Black drivers are not being overcharged for the risk they represent.

However, the draft report then pivots away from this finding to focus solely on premium differences, concluding that, when controlling for what the draft report deemed "causal factors" that influence premium differences, "there was still an unexplained gap of $271 between inferred Black and white drivers. The draft report speculates that "some of the factors that are correlated with losses but have no reasonable explanatory basis for losses may be introducing unintentional bias into the premium determination." This conjecture not only ignores the fact that there may be actuarially justified factors that explain this gap but ignores loss costs altogether. Given the overall finding that inferred Black drivers are not being overcharged relative to their loss costs, additional analysis of the "unexplained gap" in premium is unnecessary and not relevant to the requirements of the DC Insurance Code.

Insurance is priced differently than virtually every other product available to consumers - the actual cost of providing insurance is unknown at the time it is offered. Because of the prospective nature of insurance pricing, insurers rely on actuarial science to most fairly ascertain and measure future risk predictors, then match pricing to the risk of loss as accurately as possible. These efforts help ensure that less risky drivers are not overcharged to subsidize riskier drivers. Correlating price to risk also protects insurer solvency, the ultimate aim of insurance regulation.

Any attempt to evaluate fairness in insurance moving forward should focus on loss costs rather than on premium paid because that metric confirms premiums charged are supported by historic losses and costs incurred. Unfortunately, the draft report discounts the importance of loss costs and focuses solely on premium paid. With that general critique, we proceed to more specific comments on other aspects of the report.

Inference and Treatment of Protected Classes Under the Law

In a Market Conduct Examination pursuant to the D.C. Insurance Code, if the Department found that a protected class was paying a rate which was *excessive* or *unfairly* discriminatory, the insurer would face a significant finding and fines. As the data presented in the draft report confirms, the Market Conduct Examination conducted for purposes of this report has proven the opposite for both inferred Black and Hispanic policyholders based on comparison of loss/premium ratios, even assuming that the BIFSG methodology for race inference is mostly accurate for this dataset.

The appropriate metric for unfair discrimination in the District is established by D.C. Code §31-2231.13, which prohibits unfair discrimination between insured property having like insuring or risk characteristics. At no point is this legal standard or definition referenced in the report. To the extent it informs further discussion and next steps by the Department, it is worth noting that both academic and regulatory bodies have conducted extensive reviews of pricing and protected classes in the past, generally finding no evidence of unfair discrimination by insurers with respect to pricing. [1]

Causality and Legitimacy

The Department appears to have drawn a distinction between what it deems "causal" factors and other factors on the basis that the Department felt it could legitimately and causally explain differences. The report further references factors that "may be" or "can be" correlated with class and race but are "arguably" not causally related to auto insurance claims. The report then asserts that some of these factors "end up being proxies for race as well, again without a satisfying causal link."

These conclusory assertions in the report are not only unsubstantiated by extensive scholarship around insurance rating factors and risk-based pricing, but they are also at odds with the fundamental tenets of insurance law, that correlation to risk of loss rather than causation is an appropriate controlling standard.[2][3] Both the Actuarial Standards Board and the Casualty Actuarial Society emphasize the importance of correlations of risk characteristics, not causation.[4]

For instance, the report selectively cites the seminal 2007 Federal Trade Commission (FTC) report: *Credit Based Insurance Scores: Impacts on Consumers of Automobile Insurance* multiple times, overstating the findings in an effort to undermine the use of Credit Based

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[1] See e.g. Private Passenger Automobile Insurance: A Review of the Market in Missouri - PrivatePassengerAutomobileInsuranceInMOrev7-11-2017.pdf, Robert Klein: *Matching Rate to Risk: Analysis of the Availability and Affordability of Private Passenger Automobile Insurance* https://www.namic.org/pdf/publicpolicy/210202_naic_study.pdf;

[2] See Lars Powell: *Risk-Based Pricing of Property and Liability Insurance*, Journal of Insurance Regulation, available at: https://content.naic.org/sites/default/files/jir-za-39-04-el-risk-based-pricing.pdf,

[3] See D.C. Code §31-2703 (2)(A)(i)

[4] See Actuarial Standard of Practice #12: Risk Classification - https://www.actuarialstandardsboard.org/wp-content/uploads/2014/02/asop012_132.pdf and Casualty Actuarial Society Statement of Principles: https://www.casact.org/sites/default/files/2021-06/Statement%20of%20Principles%20Regarding%20P%26C%20Casualty%20Insurance%20Ratemaking_2021.pdf

Insurance Scores. Direct quotes from the report are more instructive than representations of what "may be" correlated with race, as noted below:

- "Credit-based insurance scores are effective predictors of risk under automobile policies. They are predictive of the number of claims consumers file and the total cost of those claims. The use of scores is therefore likely to make the price of insurance better match the risk of loss posed by the consumer. Thus, on average, higher-risk consumers will pay higher premiums and lower-risk consumers will pay lower premiums."
- "Credit-based insurance scores appear to have little effect as a "proxy" for membership in racial and ethnic groups in decisions related to insurance."

- "Credit-based insurance scores predict risk within racial, ethnic, and income groups. Scores have only a small effect as a "proxy" for membership in racial and ethnic groups in estimating of insurance risk, remaining strong predictors of risk when controls for race, ethnicity and income are included in risk models."

Contrary to the way the draft report leverages its findings, the FTC report shows that credit-based insurance scores are more likely to differentiate individual risks within the overall population and within racial subgroups than being a proxy for race.

Bias and Unintentional Bias

NAMIC cautions against labeling a rating plan "biased" or "unintentionally biased" merely because the rating plan allegedly causes a disproportionate impact without having what the report characterizes as an "intuitive connection to loss." "Intuitive connection to loss" is not a concept that is defined in the report, nor is it a generally accepted and agreed upon concept, much less a standard. "Bias" alone has numerous definitions and applications, and in the context of rating plans, such rating plans are not biased in a statistical sense. Notwithstanding the fact that the bias assertions divert the conversation away from the loss cost consideration, using terms that are neither defined nor generally accepted concepts allows for differing, or even unwarranted, conclusions or assumptions to be made by stakeholders.

Conclusion

The Private Passenger Auto insurance market is driven by the effort to match rate to risk, above all else. Matching rate to risk promotes accuracy, which is the essence of insurance fairness – a system in which insurers most accurately price risk and charge a commensurate premium.

Policyholders benefit from risk-based pricing as insurers compete for business and ensure that lower-risk policyholders are not unfairly forced to subsidize higher-risk policyholders. Rating factors that enhance accuracy should be embraced, not prohibited. We agree that rating factors should be responsibly and continuously considered and validated for accuracy, credibility, and objectivity by insurers, actuaries, and policymakers. What is already certain, however, is ***more*** risk-based factors improve fairness and consumer choice by enhancing the accuracy of a consumer's overall risk assessment.

Eliminating valid factors not only necessarily creates cross-subsidies that enable high risk insureds to pay less than lower risk insureds, but it does nothing to reduce the overall costs of coverage. Additionally, the removal of any proven factor necessarily increases reliance on other remaining factors, while reducing accuracy and making coverage unaffordable for more consumers. NAMIC supports insurers' ability to continue to use factors that are objective, actuarially sound, and have credible statistically significant correlation to expected losses.

Thank you for the opportunity to provide comments. We look forward to working with you moving forward on these and other initiatives to best ensure that private passenger auto coverage is available to residents of the District of Columbia at a rate that matches their risk of loss, something we believe can be best achieved through a system predicated on and sustained by fair and equal treatment, using objective standards of risk assessment for every applicant and policyholder.

Sincerely,

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