DRIVERS OF DISCRIMINATION: AN EXAMINATION OF UNFAIR PREMIUMS, PRACTICES, AND POLICIES IN THE AUTO INSURANCE INDUSTRY

HEARING

BEFORE THE

SUBCOMMITTEE ON HOUSING, COMMUNITY DEVELOPMENT, AND INSURANCE

OF THE

COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

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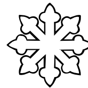

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DRIVERS OF DISCRIMINATION: AN EXAMINATION OF UNFAIR PREMIUMS, PRACTICES, AND POLICIES IN THE AUTO INSURANCE INDUSTRY

Wednesday, March 4, 2020

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON HOUSING,
COMMUNITY DEVELOPMENT,
AND INSURANCE,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 2:04 p.m., in room 2128, Rayburn House Office Building, Hon. William Lacy Clay [chairman of the subcommittee] presiding.

Members present: Representatives Clay, Sherman, Beatty, Maloney, Vargas, Lawson, Tlaib, Axne; Stivers, Posey, Luetkemeyer, Tipton, Zelden, Steil, and Gooden

Ex officio present: Representative McHenry.

Also present: Representatives Davidson and Budd.

Chairman CLAY. The Subcommittee on Housing, Community Development, and Insurance will come to order. Good afternoon, and welcome to our hearing.

Without objection, the Chair is authorized to declare a recess of the subcommittee at any time. Also, without objection, members of the full Financial Services Committee who are not members of this subcommittee are authorized to participate in today's hearing.

Today's hearing is entitled, "Drivers of Discrimination: An Examination of Unfair Premiums, Practices, and Policies in the Auto Insurance Industry."

I will now recognize myself for 4 minutes for an opening statement.

Insurance marketing and advertising are ubiquitous. Everyone is familiar with the Geico camel, the Allstate mayhem, or NFL athletes selling auto insurance via colorful and often memorable ads. What is also widespread is the use of credit-based insurance scores in the insurance industry. Most consumers are likely unaware that if they are behind on one of their bills due to injury or illness, this delinquency might negatively affect the premium that they pay for their auto insurance.

The Federal Insurance Office (FIO) reported in 2017 that approximately 18.6 million Americans live in ZIP Codes in which auto insurance is deemed unaffordable. That report considered the aver-

age annual written liability premium for the 28 percent of American ZIP Codes that the Office deemed to be traditionally underserved communities.

Auto insurance premiums, for example, are based in part on driving-related factors such as an individual consumer's driving record, but the use of such factors can raise questions about fairness. For example, racial profiling and other policing tactics that disproportionately target lower-income and minority communities could artificially increase traffic violations for certain consumers.

Think of Ferguson, Missouri. In other words, not only is the police department discriminating against you, but then you are paying more for your insurance, simply because you were profiled.

While the two do not seem to be related, the consequences of higher insurance premiums are quite profound, because then you have less money to save in order to purchase a home, send your children to college, or invest for your family's future. In short, they serve to exacerbate the racial wealth gap.

And when auto insurance premiums utilize non-driving-related factors such as a consumer's credit history, home ownership status, professional occupation, and education or attainment, communities of color tend to benefit less, based on the available research. The use of these factors also raises questions about fairness, because it does not have an obvious correlation to losses covered in an auto insurance policy. And because these factors can sometimes serve as proxies for socioeconomic status and race, some consumer and civil rights groups have pointed out the problems, going back many years, and we will soon hear testimony about these practices.

Certainly, based on today's written testimony, the auto insurance industry does not intend for this result, but nonetheless it demands action on behalf of American consumers. The draft bill by my colleague, Congresswoman Tlaib, asks the Federal Insurance Office to study the possibility of disparate impact in auto insurance pricing. I am hopeful that we will learn from this conversation how we can ensure reasonable pricing for all insurance consumers.

And I now recognize the ranking member of the subcommittee, Mr. Stivers, for 5 minutes.

Mr. STIVERS. Thank you, Chairman Clay, for convening this important hearing. I can say with great confidence that everyone in this room agrees that discrimination in all of its forms is abhorrent. It is also illegal.

But tragically, our country has a lengthy history of redlining and other forms of discrimination in financial products. This history promoted landmark Federal legislation prohibiting discrimination, including the Fair Housing Act and the Equal Credit Opportunity Act. Because insurance products are primarily regulated by the States, I am grateful that we have somebody testifying on behalf of the National Association of Insurance Commissioners who will be able to speak to the history and what happened at the State level, as far as State laws and enforcement mechanisms designed to root out and eliminate discriminatory practices in the insurance industry.

So, Mr. Chairman, I think this hearing is justified, and we should periodically examine what is going on with insurance markets and ensure that our State-based regulatory framework is

working to protect policyholders and prevent discriminatory practices.

Now, whether the legislation that has been posted for this hearing is justified, is another matter. Our subcommittee has considered several bills aimed at reducing the number of factors that insurers can use to assess risk, most notably the PAID Act, sponsored by Representative Bonnie Watson Coleman. That bill would restrict insurers from considering 11 different factors, while setting actuarily-sound rates. And I suspect that the PAID Act divided committee Democrats. Therefore, we are looking at a bill that our colleague from Michigan, Ms. Tlaib, has authored, that would eliminate one factor, and that is credit scores.

But despite today's hearing being focused on a narrower bill, the underlying set of questions remains. First, should policyholders' premiums reflect their underlying risks? Second, does credit reporting information help predict the risk of an individual so they can set actuarily-sound rates for that individual? Lastly, do high insurance costs in Michigan, with its unique laws relating to personal injury protections, justify the Federal Government upending a State-based regulatory system that has successfully protected policyholders for decades?

In assessing these questions, it seems to me that the underlying premise of this bill is flawed. Removing credit scores in assessment of risk will not resolve Michigan's self-imposed affordability problems.

But we will need to take a step forward, and I am excited to have this hearing to look into what is going on. I think we all want to do what we can to make sure that the system is properly underwriting the risk of individuals. And I am glad to hear that Michigan is actually taking up its problem with personal injury protection with State-based legislation to fix that problem, because as a neighbor to the south, I can tell you that insurance rates in Ohio are much, much more affordable than they are in Michigan, and our demographics are very, very similar. So, I am glad that Michigan is taking up their own problem.

Mr. Chairman, I do appreciate you calling this hearing, and I really look forward to hearing from the witnesses.

I yield back, Mr. Chairman.

Chairman CLAY. The gentleman from Ohio yields back. I now recognize the gentlewoman from New York, Mrs. Maloney, who is also the Chair of the House Committee on Oversight and Reform, for 1 minute.

Mrs. MALONEY. I thank the chairman for calling this very important hearing on the impact of discriminatory practices in the auto industry, especially on lower-income and minority communities. This cannot be discounted. It is very serious. There have been studies which found that on average, a good driver in a predominantly African-American community will pay considerably more for State-mandated auto insurance coverage than a similarly-situated driver in a predominantly white community.

This is serious discrimination. There are often subjective calculations, and discriminatory practices can rob hard-working Americans of the economic mobility that they desperately need. I believe this hearing is incredibly important. There are factors that insur-

ance companies use to calculate premiums, like insurance scores based on credit scoring, and the use of non-driving factors has been proven to disproportionately impact low-income and minority communities.

This is a serious challenge. I am pleased that the chairman is working on this, and I am here to work with you on legislation and other actions you think may be necessary. I yield back. Thank you.

Chairman CLAY. The gentlewoman from New York yields back.

Today, we welcome the testimony of: Douglas Heller, Insurance Expert, Consumer Federation of America; Elizabeth Kelleher Dwyer, Superintendent of Insurance, the State of Rhode Island, on behalf of the National Association of Insurance Commissioners; Eric Poe, Chief Operating Officer, CURE Auto Insurance; Sonja Larkin-Thorne, Consumer Advocate—it says in parentheses, "retired," but I don't believe that.

[laughter]

And finally, we have Erin Collins, Vice President, State Affairs, National Association of Mutual Insurance Companies.

The witnesses are reminded that your oral testimony will be limited to 5 minutes. And without objection, your written statements will be made a part of the record.

You will each be recognized for 5 minutes to give an oral presentation of your written testimony.

We will start with Mr. Heller for 5 minutes.

STATEMENT OF DOUGLAS HELLER, INSURANCE EXPERT, CONSUMER FEDERATION OF AMERICA (CFA)

Mr. HELLER. Chairman Clay, Ranking Member Stivers, and members of the subcommittee, thank you for the opportunity to present testimony today.

I am Douglas Heller, an insurance expert for the Consumer Federation of America, and for reference, I am also an appointee to the Federal Advisory Committee on Insurance, and the California Automobile Assigned Risk Plan.

Since the purpose of auto insurance is mandated by law in almost every State, we believe government has a special obligation to ensure that insurance is available, affordable, and priced fairly in the marketplace. However, in most States, the market for auto insurance is not fair for low- and moderate-income consumers and in communities of color, even if the drivers have a perfect driving record.

The data I will share today comes from recent testing that CFA conducted that reviewed online premium quotes from one of the nation's largest auto insurers. Each quote represents the cost of a minimum coverage policy for a 35-year-old driver with a clean driving record, and each is for a driver who lives at the same address, drives the same car, and has the same daily commute.

The first test was for a man who is an investment banker with a graduate degree. He owns his home and he has been insured for the past 3 years. The insurance company quoted him a premium of $718 for 6 months.

I then tested the same driver, except instead of a male driver, I asked for the price for a female driver. The basic liability policy increased for her to $813, a 13 percent gender tax on women. If in-

stead of having a master's degree, she only has a high-school diploma, her premium jumped another 5 percent to $852. And when I changed her to a renter instead of a homeowner, still at the same address, her premium increased another $84, to $936 for 6 months.

And then finally, if instead of an investment banker, she is a supermarket cashier, she will now pay $1,079 for the same coverage that the highly-educated male investment banker got for $718, even though they both have been accident- and ticket-free for all 20 years they have been driving.

All told, in order to comply with the law each year, this working-class woman must come up with $722 more than the socioeconomically advantaged man.

Now, while no insurance companies formally base rates on income, many use these various proxies for income as tools to slice and dice and price consumers in a way that consistently leaves lower-income drivers with good records subsidizing much less expensive premiums for financially secure customers.

These premiums I quoted didn't include the effects of two other non-driving factors, credit history and current insurance status, that can account for hundreds and even thousands of dollars in surcharges. In all but three States, auto insurers use credit-based scores to determine premiums, and the following Consumer Reports data from Florida corresponds to what we see in most States.

In Florida, a safe driver with excellent credit paid $1,409 per year, on average, for insurance. However, if the same driver merely had a good but not excellent credit rating, the premium jumped by $312. And the same driver with poor credit paid $3,826 for the same coverage that the excellent credit driver got for $1,409. That is a 172 percent rate hike for poor credit, and it means that two-thirds of the total insurance premium is attributable to their credit history, even when their driving history was impeccable.

But nothing highlights the problem quite like one finding from Consumer Reports: In most States, the impact of having poor credit is greater than the impact of a drunk driving conviction. In Florida, a safe driver with a poor credit score paid $1,552 more for auto insurance—that is 68 percent more—than a convicted drunk driver who happens to have excellent credit.

The last driver of discrimination that I will talk about is the surcharge for a break in coverage. This break could mark a period in which the customer was driving uninsured, or maybe didn't have a working vehicle, or it could even be that they did not carry coverage while they were deployed overseas.

Returning to the supermarket cashier, we said that instead of having insurance for the past 3 years, she is not currently insured because she has not needed coverage, and her premium jumped 41 percent. When we tested a member of the National Guard, who selected the pull-down menu option on the insurance company's website that said, "I am not insured because I was deployed," he was charged $213 more on a 6-month policy. That is a 25 percent penalty for his service. And in our research, we have found evidence of this patriot penalty in at least 21 States.

Mr. Chairman, we are very grateful that you have begun assessing the unfair situation that the poor face when buying State-required auto insurance due to their socioeconomic status, and as you

expose this new form of redlining, it will become more and more clear that action is required to rectify these discriminatory practices. And we particularly appreciate the work of Representatives Tlaib and Watson Coleman for their leadership on this issue.

Thank you.

[The prepared statement of Mr. Heller can be found on page 51 of the appendix.]

Chairman CLAY. Thank you. Mr. Poe, you are now recognized for 5 minutes.

STATEMENT OF ERIC S. POE, CHIEF OPERATING OFFICER, CURE AUTO INSURANCE

Mr. POE. Thank you, Chairman Clay and subcommittee members, for having me here. My name is Eric Poe. I am the chief operating officer for CURE Auto Insurance, a direct writer, not-for-profit auto insurer in the States of New Jersey and Pennsylvania that does not employ the use of credit scores, education, or occupation, but will be forced to adopt credit in the next year due to competitive reasons.

As the original insurance whistleblower that has crusaded against this practice for the last 15 years, testifying across this country, and particularly 12 years ago, I was before this Financial Services Committee on this issue, I have not received warm welcomes from my industry at trade luncheons, but I have won over my conscience on how we do business.

In my limited time here today, I want to quickly address two questions that are fundamental to this subcommittee: first, why does the industry use socioeconomic rating factors; and second, how do they actually get this in front of, and passed by, regulators throughout the State? And then in summary, I'll talk about what the unintended consequences are in this country when we use these socioeconomic rating factors, and what would happen if we actually support the ban in the PAID Act.

Starting with why, there are two subcategories of why the industry does this. First, the oldest reason in America, for profit and greed. The reality is that higher-income drivers produce the highest profits for our industry. Therefore, any proxy that has anything to do with income will produce the same results. If you run a business and you want to make a profit, of course you are going to adopt practices that give you the biggest profits.

Second, data mining. Unbeknownst to most people in the room, if you simply get a quote for car insurance on Geico and you never even buy a policy through Geico, in their terms and conditions, you agreed to allow them to run your credit report, how often you actually make payments on your lease payments, et cetera, and they actually can share it with every marketing partner they have.

So moving on to the how, and to get to the how, before I do that, I want to share with you the results of the largest study ever done regarding occupations. In this country, in the year 2000, there was a million-policy study of occupational groups outside of students. The three highest propensity of getting in a car accident in this country were doctors, attorneys, and architects. And that flies in light of the notion that these are valid predictors of risk.

So, ask yourself, how do we get these factors used in every State that we write this business, in terms of the insurance industry, and that is because they have done a successful job of redefining the word, "risk." If you look at every single State in this country, you are not allowed to adopt factors that don't show a valid predictor of risk.

What the industry has done successfully over the last 30 years is redefine what does that risk mean, by using a term called, "loss ratio." Loss ratio is simply a measurement of profitability. For the industry, if I say that I have a loss ratio of 90 percent, that means I actually make 10 cents on every dollar that I collect.

So what they have done is, they have taken factors and they have provided studies that showed that these factors correlate to loss ratios. Those loss ratios are simply saying that they are more profitable. So yes, any variable that ties to income is going to show loss ratios that correlate to those factors, but they are not dealing with the risk of somebody driving unsafely on the road.

In terms of the impact that this has on the country, we can look at the State of New Jersey. In the year 2003—there wasn't, for 30 years, a mandated insurance in the State of New Jersey. There wasn't a single car insurance company that was allowed to use credit scores, education, or occupation at all. So, we can look at that State as an isolated State.

Since 2004, since they let credit scores, education, and occupation in the State of New Jersey, bringing in Geico and Progressive, two things have happened. Geico is now the largest writer of car insurance in New Jersey, collecting $1.7 billion annually, in just New Jersey alone, and Progressive is not too far behind.

But more importantly to this subcommittee is that the uninsured motorist rate in the State of New Jersey has gone up 90 percent in 15 years. So if you want to know what the impact is, we could look at New Jersey for what that does country-wide.

Now, what would the impact be in terms of banning this country-wide? Simple. Don't let my industry convince you that this is going to make rates go up for everybody. It doesn't make any sense. People, we are not talking about banning the use of seat belts and headlights and blinkers. We are talking about, there is going to be an aggregate loss to the system every year, in every State in which insurance is written. All we are talking about is how we are going to fairly distribute what those rates are going to be for the people in this country.

There are 30 million Americans who are currently driving without insurance because they can't afford it, and it is the obligation of this country to do something about it.

Thank you very much.

[The prepared statement of Mr. Poe can be found on page 77 of the appendix.]

Chairman CLAY. Superintendent Dwyer, you are now recognized for 5 minutes.

STATEMENT OF ELIZABETH KELLEHER DWYER, SUPERINTENDENT OF INSURANCE, THE STATE OF RHODE ISLAND, ON BEHALF OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS (NAIC)

Ms. DWYER. Thank you, Chairman Clay, Ranking Member Stivers, and members of the subcommittee. Thank you for the invitation to testify today.

We appreciate the subcommittee's efforts to explore discrimination in automobile insurance. State insurance regulators are committed to ensuring that customers are treated fairly and have access to affordable auto insurance products. Protecting policyholders and addressing any unfair treatment of consumers is crucial to the work we do and the bedrock principles of State insurance regulation.

Auto insurance underwriting and rate-setting are important for both insurer solvency and consumer protection, and insurance regulators have robust authorities to address discriminatory practices in these areas. Most States review rate filings to ensure that insurance companies are using rate factors that correlate with risk, a loss or expenses, and are based upon supportable actuarial evidence. The more underwriting factors that are used that correlate to risk of loss, the more accurate the risk assessment and the rate.

This regulatory oversight helps to ensure policyholders are charged a reasonable rate, and an insurer is taking the appropriate amount of risk to maintain solvency, and therefore be able to pay policyholders.

However, our regulatory framework recognizes that certain risk classifications, even when accurately correlated with risk, may be inconsistent with other public policies and also provide regulators with the authority to ensure that rates are not excessive, inadequate, or unfairly discriminatory. States have significant authority under their own fair trade practices statues, which prohibit insurers from refusing to insure or refusing to continue to insure or limiting the amount of coverage available to an individual because of race, sex, marital status, religion, or national origin.

Through these authorities, insurance regulators strive to ensure that consumers are treated fairly and to maintain the critical balance between insurance solvency and product availability and affordability.

To help us implement our statutory authorities, insurance regulators have tools designed to identify problematic activity, the rate approval processes, and market conduct regulation and examination. State regulators also recently enhanced their toolkit by collecting detailed auto insurance data. Regulators can select a region, city, or ZIP Code, and look at the coverage type, premium, and severity of losses in that area, and compare it to demographic data in their States. If States see anomalies or reasons for concern, they can follow up and look at the individual company. The NAIC is also completing a public report, which will show maps at ZIP Code-level for every State under the same metrics.

While insurance regulators have broad authorities to address unfair treatment of consumers, we acknowledge that insurance rating and underwriting have become increasingly sophisticated, with the advent of complex algorithms and the use of big data and artificial

intelligence. Technological developments have the potential to improve how an insurer does business and can benefit policyholders. However, we recognize the complexity of these processes and the importance of ensuring that they comply with State insurance laws designed to protect consumers from illegal practices.

To that end, insurance regulators, through the NAIC, are exploring insurers' use of big data for claims, marketing, underwriting, and pricing, and developing resources to help with evaluation of complex models, including developing best practices to serve as a guide for review of predictive models.

In conclusion, we share your goal of preventing unfair treatment of insurance consumers and remain committed to addressing this important issue through our supervision of the insurance sector. States have the enforcement authority, data, expertise, and understanding of local market dynamics critical to auto insurance, and are in the best position to determine regulatory and legislative approaches to address discriminatory practices.

For these reasons, the NAIC opposes Federal legislation that would preempt State insurance regulatory authority in these crucial areas and would limit a State's flexibility to regulate such practices in a manner it deems appropriate for the auto insurance market.

Thank you for the opportunity to testify, and I would be pleased to answer any questions.

[The prepared statement of Superintendent Dwyer can be found on page 46 of the appendix.]

Chairman CLAY. We will now go to Ms. Larkin-Thorne for 5 minutes. You may proceed.

STATEMENT OF SONJA LARKIN-THORNE, CONSUMER ADVOCATE AND RETIRED INSURANCE EXECUTIVE

Ms. LARKIN-THORNE. Thank you, Chairman Clay, Ranking Member Stivers, and members of the subcommittee. Thank you for the opportunity to testify this afternoon on pending legislative proposals regarding the use of credit scoring in the underwriting of personal automobile insurance, and for allowing me to share my insights and actual experience.

My name is Sonja Larkin-Thorne. I have over 40 years of experience in the insurance industry and I currently Chair the Consumer Data Subcommittee of the Connecticut Department of Insurance Advisory Council on Technology. My testimony will not attempt to repeat what you already know or have heard about the use of insurance credit scores in personal auto insurance underwriting or the many studies on this topic over the last 20-plus years.

My testimony focuses on the evolution of underwriting of personal automobile insurance from traditional underwriting to the use of credit scores, and now, to the use of big data. I hope my testimony will also highlight how the collection and analysis of these new data sources reaches every aspect of a policyholder's life, but does so with little or no regulatory oversight, and notably less oversight than is applied to credit scores.

I am an insurance underwriter by training. I spent the first 10 years of my insurance career working in or managing underwriting departments. When I began my career, the manual process of col-

lecting and analyzing underwriting data represented a significant expense that necessarily contributed to the cost of policyholder premiums.

More than 40 years ago, insurers began to analyze and utilize data sources that could reduce underwriting costs while continuing to accurately reflect the likelihood and expense of a policyholder filing an auto insurance claim. I recall training my underwriting team on how to read a credit report, while they also reviewed traditional motor vehicle records and the policyholder's paper application for automobile insurance. We had no desktop computers or electronic submission of applications back then. Each piece of data was assigned a code for input into the company computers. Little did we know, that was the beginning of big data.

There is no escaping that data is the foundation of the insurance industry and that the insurance industry has always collected data and made long-term predications regarding pricing, loss trends, and profitability. However, just like the days of traditional underwriting gave way to underwriting that included the use of insurance credit scores, the heydays of insurance credit scores are on their way out.

The continued difficulty of explaining the correlations between how one pays their bills and the likelihood and expense of a policyholder filing an auto insurance claim has caused the largest insurers to move beyond insurance credit scores and to look at and use other data to enhance their underwriting and pricing.

For example, California—and I grew up in California and lived in California for most of my life—one of the largest personal automobile insurance markets in the country, does not allow the use of insurance credit scores, yet the State remains one of the most competitive personal auto insurance markets in the country. This means insurance companies in California and elsewhere have figured out how to price personal auto insurance without using credit scores.

The use of credit scores in personal automobile insurance underwriting increasingly is being enhanced or replaced with incredible amounts and new types of alternative, unregulated personal individual data. Commonly referred to as, "big data," these extremely large datasets can be analyzed to reveal patterns, trends, and associations related to human behavior, interactions, shopping habits, driving patterns, and demographics like race, occupation, education, marital status, voting history, et cetera.

It is this big data, often produced by unregulated algorithms that insurance companies use in insurance department rate filings, to which I wish to draw the subcommittee's attention. Any legislative or regulatory solution that seeks to achieve the goals behind the legislation before the subcommittee today needs to look further than the somewhat outdated and narrow issue of insurance credit scores.

To this end, I would like to draw the subcommittee's attention to the current work of the National Association of Insurance Commissioners. The NAIC recognizes and has drawn appropriate attention to the use of credit scores and to the use of big data. Currently, there are 3 working groups looking at this issue, and each working group incorporates the nation's 56 insurance regulators.

My recommendations regarding the legislative proposals pending before the subcommittee are informed by my firm belief that insurance consumer protection is best served at the State level. Absolutely, there is a role for this subcommittee and for the Federal Insurance Office to work with our State insurance regulators to make sure that credit scores, big data, and any other datasets are used to fairly and responsibly set personal automobile insurance rates. I caution the subcommittee against imposing a Federal solution to address an issue for which the State insurance regulatory system is best designed.

[The prepared statement of Ms. Larkin-Thorne can be found on page 71 of the appendix.]

Chairman CLAY. And Ms. Collins is now recognized for 5 minutes.

STATEMENT OF ERIN COLLINS, VICE PRESIDENT, STATE AFFAIRS, NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES (NAMIC)

Ms. COLLINS. Good afternoon, Chairman Clay, Ranking Member Stivers, and members of the subcommittee. Thank you for the opportunity to testify here today. My name is Erin Collins, and I am the Vice President of State Affairs for the National Association of Mutual Insurance Companies.

NAMIC membership includes more than 1,400 regional and local mutual insurance companies on Main Streets across America, as well as many of the country's largest national insurers, who collectively write about half of the nation's auto insurance business.

NAMIC is here today to speak in strong opposition to legislation designed to institute broad prohibitions on the use of legitimate and predictive underwriting tools in auto insurance. It is our view that Federal legislation in this area is unwarranted and unnecessary, and it has been demonstrated time and time again that such underwriting restrictions harm policyholders by driving up insurance costs across-the-board.

I want to begin with an overview of insurance underwriting and risk-based pricing. The goal of insurance underwriting is to correlate the prices for insurance policies as closely as possible to the likely cost of claims generated by those policies. The more accurately a company targets the actual costs, they better they are able to serve their policyholders, which, in turn, enables them to offer more products to more individuals. Simply put, accurate underwriting enables more coverage for more consumers.

Utilizing predictive information is unavoidably central to this process. Insurance differs from most other products because the actual cost of providing insurance is unknown at the time the product is offered, and the customary laws of supply and demand do not apply.

Looking back at historic losses helps to forecast future losses, but prior claims alone do not provide enough information to serve as an adequate predictor of future risk. Therefore, to more accurately make these predictions, various factors are used to analyze the risk of future losses from any given policy.

In today's auto insurance market, a multitude of risk-predicting factors may be considered, including things like driving history,

multi-policy discounts, vehicle information, vehicle safety equipment, age, credit history, miles driven, et cetera. How or even whether particular factors are used differs by insurer.

However, today's actuarial science indicates that the most accurate risk assessment is achieved through a combination of risk factors. It is important to note that these factors are actuarially-based tools that are correlative and do not, and generally cannot demonstrate causational relationships. A causational relationship would indicate that a given factor results in a loss. Even a fact pattern of a dozen prior speeding tickets and prior accidents does not result in a future loss.

Any assertion that factors should be held to a causational standard fundamentally misunderstands the methodology of actuarial science and would exclude practically every exercise to try to assess risk.

The US auto insurance market is one of the most competitive of any industry in our economy, and competition ensures that insurers have every incentive to accurately and appropriately match the rate to the actual risk that is posed by a driver. Those companies that predict claim costs better than their competitors are typically more successful.

Ultimately, we believe that competitive markets are the most effective way to ensure lower prices, widespread availability of insurance products, superior service, and product innovation. The State-based system of insurance regulation has allowed that competitive market in the U.S. to flourish. This robust regulatory system is designed with consumer protection foremost in mind, and regulates virtually every aspect of the insurance business. Under State law, insurers are prohibited from setting rates that are excessive, inadequate, or unfairly discriminatory against any individual. Stringent anti-discrimination prohibitions are also in place in the States, and rating factors must be actuarily sound in order to be used by law. There is no data to indicate that these provision or their enforcement have been inadequate or lacking.

As I close, I would reiterate that banning the use of underwriting factors would simply disrupt and substantially weaken auto insurance markets across the country, undermine the State-based system of insurance regulation that serves the U.S. well, and ultimately harm the very consumers such action purports to help. Therefore, NAMIC respectfully encourages the subcommittee to reject the legislative proposals being discussed here today.

Again, thank you for the opportunity to speak here today, and I look forward to answering any questions you may have.

[The prepared statement of Ms. Collins can be found on page 36 of the appendix.]

Chairman CLAY. I want to thank all of the witnesses for your testimony today, and now we will begin the 5-minute questioning period. I will start off by recognizing myself for 5 minutes.

Mr. Poe, you have testified previously that your company has chosen not to use certain non-driving-related factors such as credit history, despite the competitive advantage of doing so, because of concerns about the fairness of using such factors. Can you talk about which factors your company deliberately uses, chooses not to

use, and how you believe that these company practices make auto insurance premiums more equitable and affordable for consumers?

Mr. POE. Yes. Thank you, Chairman. We don't use any non-driving factors that are what we think are obvious corollaries to socioeconomic proxies. So we don't use—right now, we examine all filings by other carriers, and I can tell you, as a matter of fact, that my industry uses full-time employment as a decision of whether or not you are eligible for the preferred rates of a car insurer. So if you simply lose your job, your rates will be more, and you will not be eligible for a preferred company.

What my industry does is they tend to actually file two separate companies with the same trademark name. For example, Geico has three trademark named companies in almost every State they do business: Geico; Geico Indemnity; and Geico Casualty. But you only get told to go to Geico.com and fill out a quote because you might save 15 percent.

The reality is that most people who go to Geico and put in their information have no idea that on the basis of your educational attainment and your job, whether or you are in a high-paying job, you will be rejected from the preferred companies of Geico, and only be eligible for a higher rate for car insurance and not be notified, because there is no Federal requirement and there is no State requirement to say that you were rejected on the basis of your educational attainment and your occupation.

There are other statuses like home ownership status. There is a reason why all these advertisements talk about bundle, bundle, bundle. Does a poor person have a house? A poor person barely has a window or a pot to pee in, to throw it out of.

So, mandating insurance becomes a public policy requirement. In terms of this committee, there is a requirement, in our opinion, there is an obligation for legislators to make sure that if you are going to mandate car insurance, you can't just let poor people pay more than rich people. That is the bottom line.

Chairman CLAY. In other words, you are telling me that there is an extra tax for being poor.

Mr. POE. Exactly.

Chairman CLAY. It is imposed on these people by the industry.

Mr. POE. Yes. And unlike the traditional methods of predatory lending, where you can actually draw a conclusion of a credit risk because somebody doesn't earn as much money and they are more likely going to default on their loan because they don't have assets to collateralize, here we are talking about mandating car insurance, and I can be a safe driver my entire life. But simply because I am poor, I am going to pay 40 percent more for car insurance, for no reason whatsoever except for that I drive less profits than the wealthier people in this country.

Chairman CLAY. Thank you for your response. This next question is for Mr. Heller and Ms. Larkin-Thorne. The insurance industry has stated that it is regulated at the State level, unlike most other large industries. Mr. Heller and Ms. Larkin-Thorne, if the insurance companies don't change the way they treat certain discrete and insular minorities with regard to premium pricing, are the individual States capable of mandating change? We will start with you.

Ms. LARKIN-THORNE. Thank you, Mr. Chairman. Yes, they are. California is a prime example of a State that took control of insurance rating factors. The people, the voters of California changed that law. And I say that any State voters who want to build the type of coalition that was built in California, that took on insurance companies spending millions of dollars against their initiative, they can win.

I believe in the power of the vote, I believe in the power of the people, and I think if they want to change, they can. And every Member who thinks that there is a problem in their State should be talking to their insurance commissioners. They should be talking to their legislatures. And I think that they can facilitate the type of change they want. You look at California. You look at Hawaii. They did it.

Chairman CLAY. Mr. Heller, are the States capable of mandating change?

Mr. HELLER. Mr. Chairman, unfortunately, I think many States have fallen down and failed on this issue. I agree with Ms. Larkin-Thorne. I am a Californian and I work very closely with the California regulators. The people of California did speak. Unfortunately, most States don't have a ballot initiative the way California did to enact that law and overcome the resistance.

Unfortunately, regulators around the country have fallen flat on this issue, and we need the support from the Federal Government to say you need to at least have a bare minimum, because if you are going to make people buy insurance, we are going to make sure that you have a floor of protections for consumers, so low-income consumers and communities of color have access to products in their State.

Chairman CLAY. Thank you for your response. My time has expired. The gentleman from Ohio, Mr. Stivers, the ranking member of the subcommittee, is now recognized for 5 minutes.

Mr. STIVERS. Thank you. Thanks, Mr. Chairman, for holding this hearing. And I thank all of you for your testimony, and I would like to start with Ms. Dwyer.

Can State insurance regulators be trusted to prevent discrimination in the auto insurance markets?

Ms. DWYER. Yes, we can.

Mr. STIVERS. What mechanisms do they currently employ to prevent this?

Ms. DWYER. We currently, in every State except Illinois, review all rate filings from all auto insurance companies. We look at both the form and the rates being charged. We look at their algorithms, and we test for factors such as suspect classifications. We would never allow anyone to rate on race, national origin, or religion, and that is pretty much standard in all 50 States.

Mr. STIVERS. Great. A question for Mr. Heller, given that you said that our State insurance regulators have fallen down on the job. They have been on that job for 75 years, since D-Day. Would you prefer, then, a Federal regulator, for instance?

Mr. HELLER. No.

Mr. STIVERS. So, you would prefer—

Mr. HELLER. Thank you, Mr. Stivers. I actually—

Mr. STIVERS. —Federal laws to override McCarran-Ferguson?

Mr. HELLER. I think that it might be good to get rid of the antitrust exemption that the insurance industry is given through McCarran-Ferguson. That is true.

But Ranking Member Stivers, I actually believe in State regulation. I think it is the way to go, because I do think that at the local level, we can do a better job. But what I have seen in too many States, is—

Mr. STIVERS. I only have 5 minutes, so be quick.

Mr. HELLER. —a failure to protect the most vulnerable consumers, and I think efforts here in Congress to support a basic floor of rules and protections would be valuable.

Mr. STIVERS. Okay. For Ms. Dwyer and Ms. Collins, does anything in this bill by the Congresswoman from Michigan, Ms. Tlaib, change the insurance rates in Michigan suddenly, if this bill were to pass? Would it change insurance rates in Michigan for automobile drivers, any of them?

Ms. COLLINS. Thank you. I don't think it would demonstrably—

Mr. STIVERS. The studies—would that change insurance rates for anybody?

Ms. COLLINS. It would not demonstrably improve insurance rates, no. I am sensitive to the concerns of the Michigan insurance market. I have spent a large part of my career working on those issues, and they are not problematic because of underwriting factors. They are built upon the problems of the no-fault system with unlimited lifetime medical benefits.

Mr. STIVERS. Ms. Dwyer, are you familiar with what is going on in Michigan with regard to personal injury protection and what the Michigan legislature and the governor are doing to actually try to fix that, to make insurance more affordable in Michigan?

Ms. DWYER. Yes, and I am absolutely not an expert, but it is my understanding that there have been changes that will go into effect in July that should be beneficial.

As far as your original question, what it would do, removing one factor would reallocate, so some people would get increases, and some people would get decreases. It would be disruptive to the market, but it wouldn't appreciably lower what everyone is paying.

Mr. STIVERS. And Ms. Collins, let's say for a second we were to only go to driving factors. Are you familiar with the study from Stanford University that indicates that minorities are much more likely to be pulled over and ticketed than white drivers? And if Congress would decide to preempt State laws and only move to driving factors, excluding all non-driving factors, what would that do to minority policyholders?

Ms. COLLINS. I am not specifically familiar with that study. Generally speaking, in terms of driving records, I do know that they are notoriously inaccurate, and I think that we have shown that the majority of drivers in America are benefitted from a full picture of risk, by as many factors as can be contemplated.

Mr. STIVERS. Is it possible that if we move to only driving factors, potential institutional racism that happens in some places where minority drivers are more likely to be pulled over and ticketed would actually result in higher insurance rates for minority drivers?

Ms. COLLINS. Based on your description of that study, yes, that does seem logical.

Mr. STIVERS. That is a study from Stanford University, so I will summarize it for you.

And this question is for Superintendent Dwyer. Do you think the bills attached to this hearing raise any concerns about broad Federal overreach into our State-based system?

Ms. DWYER. Yes, I do. The other factor that has to be taken into account is financial solvency. So the more rating factors that are used, the better predictor of risk, the more solvent the company is. And why is that important? Because they pay consumers. The worst thing out there would be paying premiums and not having your claim paid.

Mr. STIVERS. Great. Quickly, just by a show of hands, is there anyone on the panel who does not support the State-based regulation for insurance under McCarran-Ferguson?

I will note the absence of a raised hand, which means everyone on the panel does support McCarran-Ferguson and the State-based policy. Is that correct? Can you show me by a nod of the heads or something? Great.

Mr. Chairman, my time has almost expired. I would like to submit for the record letters from the Insurance Information Institute, the American Property Casualty Insurance Association, and the U.S. Chamber of Commerce, that all have some concerns about the draft legislation we are talking about today, and I would appreciate them being entered into the record.

I yield back the balance of my time. Thank you.

Chairman CLAY. The gentleman yields back, and without objection, the documents are submitted for the record.

And I have to note that my friend from Ohio has adopted Mr. Green of Texas's tactic as far as a show of hands.

Mr. STIVERS. It is a good tactic.

Chairman CLAY. I now recognize the gentlewoman from Michigan, Ms. Tlaib, for 5 minutes.

Ms. TLAIB. Hello, everyone. Thank you so much for being here. This is one of the most critical issues right now in the State of Michigan that is keeping people in poverty, because of these high rates.

We can talk a lot about some of the other broken system, but one question I have, to follow up on my colleague's question, is how many of you on the panel support proxies that discriminate?

Okay. Ms. Collins, I have some questions for you. What is your marital status?

Ms. COLLINS. Thank you, Congresswoman. I am married.

Ms. TLAIB. Yes. Credit score?

Ms. COLLINS. I do have a credit score.

Ms. TLAIB. Do you know what it is?

Ms. COLLINS. Not offhand, no, I don't.

Ms. TLAIB. How about your education level?

Ms. COLLINS. I have a master's degree.

Ms. TLAIB. How about your ZIP Code, if you would like to provide that.

Ms. COLLINS. I have a ZIP Code. I prefer not to share it.

Ms. TLAIB. Sure. These are the questions that are asked of my residents, which have nothing to do with whether or not they are a good driver. It has nothing to do with whether or not they are susceptible to accidents. These are proxies to discriminate, and it is very frustrating for my residents, from their credit score, to their education level, to even be asked that, or them turning from married to widow, that they see a 300 percent hike in their auto insurance rates.

And so one question to Mr. Heller, one of the studies that Poverty Solutions at the University of Michigan did was they looked at someone with a decent credit score, and someone with a better credit score, and the person who had a lower credit score was paying 300 percent more than the other person, but the other person, the one with the better credit score, had a DUI, driving under the influence, violation.

What would justify—and again, this is a study by the University of Michigan showing a 300 percent hike, again, of the person who is the safer driver versus the one who would drink and drive?

Mr. HELLER. Thank you, Representative Tlaib. Unfortunately, that is not just a problem in Michigan. That is what we see in most States. Consumer Reports, a couple of years ago, reported that in most States the drunk driver with excellent credit pays less for insurance, on average, for the same product than the poor credit, excellent driver. And what the insurance industry sees in the poor credit, excellent driver, is somebody who, with other factors like their job title or their education, is likely to buy a basic limits auto insurance policy, and that is just not that attractive. There is not a big lifetime value to selling sur to somebody who is only buying the minimum limits.

But that person with the drunk driving violation and the excellent credit score, and perhaps also the investment banker with a college degree, might buy home insurance as well, and maybe life insurance, an umbrella policy. Maybe they will insure their boat. The lifetime value is what the insurance companies are looking for. And that may be fine for other products, but in virtually every State in the country, auto insurance is required by law, and that is why we believe we have to have some public policy standards that say some factors are not acceptable because they are keeping people from getting into the market and leaving them uninsured.

Ms. TLAIB. And one of the things I want to refer to you, Ms. Collins, and I would like the chairman to submit for the record, are ProPublica and Consumer Reports reports which found that members of the National Association of Mutual Insurance Companies were charging higher rates in ZIP Codes where most residents are minorities than ZIP Codes that were predominantly white neighborhoods with similar accident calls.

Chairman CLAY. Without objection, it is so ordered.

Ms. TLAIB. Thank you. Ms. Collins, justifying racial disparities by pointing to differences in risk is an argument that falls apart when we really investigate the data. Why would the association be against a study, just to investigate the data regarding disparate impact of auto insurance rates? Why don't you want to know if it impacts your consumers, the ones who are paying into the system, to make sure they are not being discriminated against?

Ms. COLLINS. NAMIC is supportive of objective studies that look at all underwriting and rate impactors—

Ms. TLAIB. So you are okay with the Federal Government—

Ms. COLLINS. We are okay with the FTC study. There are numerous studies that look at these factors, in Arkansas, for example.

Ms. TLAIB. Are you okay with the Federal Insurance Office investigating? Why wouldn't they be objective?

Ms. COLLINS. If you're speaking to the measure in this committee, please note that I said, "objective study." I believe that studies should not be built with conclusions in mind, and the language of that particular bill seems not to meet that test. So, we would oppose that measure.

Ms. TLAIB. One of the things in some of the comments by some of your members has been that low-income Americans spend more money on cigarettes and alcoholic beverages. Do you remember that study and those comments coming from your association?

Ms. COLLINS. I am assuming you are referring to the letter you referenced in the last hearing.

Ms. TLAIB. That's right.

Ms. COLLINS. I am glad you brought that up, because there was an article that grossly mischaracterized a letter that we wrote directly in response to the—

Ms. TLAIB. Well, then why not support—

Ms. COLLINS. —FIO study's specific questions.

Ms. TLAIB. But why not, Ms. Collins, support actually investigating whether or not there is disparate impact in your industry?

Ms. COLLINS. We were responsive to the FIO's specific questions.

Ms. TLAIB. Why not support the Federal Insurance Office to provide this data and information, so we make sure that our folks are not being discriminated against.

Chairman CLAY. The gentlewoman from Michigan's time has expired.

Ms. COLLINS. Thank you, Mr. Chairman. I would be happy to schedule some time to sit down with the Congresswoman and go through those issues at her leisure.

Chairman CLAY. Okay. I now recognize the gentleman from Florida, Mr. Posey, for 5 minutes.

Mr. POSEY. Thank you, Mr. Chairman. It has been my observation over the years that the government closest to the people works best. One of the biggest problems I observed in the Florida legislature was that members of the legislature who had not served in local government thought that when they got elected to the legislature, that meant they were the boss of local government. And, at the same time, they hated the Federal mandates that would get passed down from time to time.

Hypocritically, I might add, one day, actually at 10:00 in the morning, they passed a joint resolution to Congress and said, "Do not send us one more of your unfunded mandates," period, end of subject, exclamation point. At 2:00, 4 hours later, they passed an unfunded mandate on local governments.

And then, one of the problems I see here in Washington is that Members who haven't served in local governments or State governments seem to think that suddenly they are the boss of the State

governments and the local governments, which makes it even worse.

And on the regulatory side, we have talented leadership in our States and their insurance commissioners, and historically, States regulated insurance and helped tailor insurance products to the needs of the people in their States. Today, we have legislation before us that would intervene or interfere in the State-led insurance sector by dictating coverage and premium-making practices. This would prohibit the use of credit scores, credit reports, or ZIP Codes, as mentioned earlier, as if somebody in Manhattan should pay the same price for liability insurance as somebody in rural Wyoming. I don't know how you can think that, but obviously, there shouldn't be any discrimination whatsoever in the insurance industry or any other industries.

And to follow up with Ms. Collins, what is the evidence regarding discrimination in coverage decisions in pricing of auto insurance?

Ms. COLLINS. Thank you, Congressman. There is no evidence that I am aware of that there is any unfair discrimination in underwriting or rating in auto insurance. In fact, the State-based system is quite adept at regulating the market. Superintendent Dwyer and her colleagues are robust regulators who ensure that there are no unfair discriminatory practices in the auto insurance market, or any insurance market, for that matter, and you will find no greater advocate of the State-based system than NAMIC.

Mr. POSEY. Is there a case you are aware of where auto insurers discriminated based on race or gender?

Ms. COLLINS. No. I am not aware of, again, any unfair discrimination in auto insurance.

Mr. POSEY. How would the industry assess this bill to prohibit the use of a credit report, ZIP Code, credit score, other consumer data or information?

Ms. COLLINS. I think credit-based insurance scores have been the subject of quite a lot of study over the years, and they have a variety of authors—States, localities, departments of insurance—and they all reached the same conclusion, which is that credit-based insurance scores are highly predictive of risk.

And I should note that credit-based insurance scores are not the same thing as a credit report. Where a credit report refers to delinquency, a credit-based insurance score aims to predict an insurance loss. And what the studies have shown is that it is incredibly predictive in doing that. So, to remove that asset and tool in matching rate to risk would demonstrably harm the insurance market, and ultimately, harm consumers.

Mr. POSEY. Many comments have been written on the power of market competition to drive out discrimination. It makes sense that an auto insurance company would find little profit in deciding to charge a higher price to persons of color or women, or not to sell them insurance if a competitor would provide the coverage or could bid the business in a way with a lower rate.

Can you please share with me what we know about the power of competition in discouraging discrimination, let's just say in auto insurance, for example?

Ms. COLLINS. Sure. The State-based system in the United States has fostered the most competitive and powerful insurance market

in the world, and that only helps consumers. It provides more coverage opportunities, more products, more innovation, and that only creates more space and more entities to compete for those policyholders' business. And to that end, it would ultimately be a factor that would eliminate that kind of bias rather than increase it.

Mr. POSEY. Thank you. I have read that regulators in California are thinking of prohibiting discounts to certain classes of drivers because they believe such discounts are not based on the likelihood of lower claims, and that such discounts result in discrimination. While this does not sound like a good policy, it is also a powerful example that States already have the responsibility to regulate their own insurance markets, making the kind of Federal legislation we are examining here inappropriate in preempting the strong State-based system of insurance regulation.

Can you please comment on this, and whether California's plan to prohibit certain discounts is a good way to fight discrimination?

Ms. COLLINS. I don't believe that an initiative like that would at all address the concerns that it purports to protect. In fact, I think it would hurt the consumers ultimately, because it would restrict further the ability of insurance companies to accurately rate risk and offer their customers discounts that they find valuable.

Chairman CLAY. The gentleman's time—

Mr. POSEY. Thank you, Mr. Chairman, for the time.

Chairman CLAY. —has expired. The gentleman from Florida, Mr. Lawson, is recognized for 5 minutes.

Mr. LAWSON. Thank you, Mr. Chairman, and witnesses, welcome to the committee. This question is more of an observation, and I think anyone can answer it. The National Highway Traffic Safety Administration (NHTSA) confirmed that male drivers cause 6.1 million accidents annually, while there are only 4.4 million crashes per year with women at fault. Yet, women are more likely to pay higher rates than their male counterparts, according to the research just completed by the CFA.

The CFA found that Progressive charged 40-year-old female drivers living in Tampa 32 percent more for the same coverage than males. The insurance company's use of gender as a rating factor does not seem to reveal much in the way of a consistent risk assessment.

Do you think regulators should reconsider allowing companies to continue using it at all? I will start with you, Mr. Heller.

Mr. HELLER. Thank you, sir. The use of gender in auto insurance is something that surprises people, particularly women who think that they are going to get a better deal. You cited some statistics. And while it is true that in some companies, young men still pay more than young women, not only has the Consumer Federation of America found, but also several insurance industry research studies and the California Department of Insurance have found that women pay more for auto insurance now, and it is just striking to people. It is also unfair. That is why about seven States have prohibited the use of gender, California most recently.

And I think that the point perhaps is that we need to protect people who have to buy this product, and if the States aren't taking on that role, then it is important for the Federal Government to push them in that direction. That is why this hearing is so impor-

tant, if only to raise the attention and make the State regulators pay attention. We appreciate it, as we are working in the States for this protection, because women should not pay more for auto insurance, and it is happening across the country.

Mr. LAWSON. Mr. Poe, do you want to comment on that?

Mr. POE. Yes, just that we don't use—

Mr. LAWSON. I can hardly hear you.

Mr. POE. Sorry. Just that we have never actually charged females more than males, so that data only suggests that once again, males probably make a higher income. Higher incomes generate better profitability, and that is probably what justifies their algorithms, not based on our non-driving factors, traditionally. So there is never a female who actually pays a higher rate with our carrier.

Mr. LAWSON. Does anyone else want to comment on that?

Ms. DWYER. Thank you. When we look at an algorithm, when we look at a rate filing, we make sure that every factor being used is supported actuarily. So some of the information that you are producing should be taken into account by the actuary, but we do not allow them to simply use a factor that has no actuarial basis.

Different companies are also going to use different factors. So as an individual, if you receive a poor rate from one company, you can shop that rate and get different amounts, because they are looking at their overall risk. That competition benefits the individual customer.

Mr. LAWSON. Ms. Larkin-Thorne?

Ms. LARKIN-THORNE. As a divorced mom who raised a child, when I went from married to single or divorced, my insurance rate did not change. It was the same. And so I look at it, and I have friends who have had the same circumstances, and I have not heard that complaint. And I talk to a lot of people about their insurance.

Now I live in Connecticut and it may be the rates in our State. But I was in California at the time I was divorced and my rate absolutely did not change at all.

Mr. LAWSON. Ms. Collins?

Ms. COLLINS. Thank you, Congressman. I would echo the comments from Superintendent Dwyer that it is important to recognize that each factor must be actuarily sound in order to be utilized. I would also note that as I stated in the beginning, we find that actuarial science most often dictates, and the companies now employ, that it is a combination of all factors. So there is not an instance where there is an individual factor that dictates the rate or underwriting of an individual.

Mr. LAWSON. So basically what you are saying is—I know my time is running out—in Florida, for example, in an area like Tampa, females 40 years of age are paying a 30 percent higher rate than the males in Florida. Mr. Heller, I don't understand how that happens.

Mr. HELLER. It does happen, and it happens because the insurance companies are pricing the way they want for their profitability. And unfortunately, regulators are not diving in as deep as they can. With respect to Superintendent Dwyer, I see this around the country, and I will note that the big irony here is that some companies do charge women less than men. And if the actuarial

science was accurate, there is no reason that one company would see women as more risky and another company would see men as more risky. They are doing this for their own marketing purposes, but consumers have to buy the product, irrespective of their gender.

Mr. LAWSON. Thank you. My time has expired, and I yield back, Mr. Chairman.

Chairman CLAY. The gentleman's time has expired. The gentleman from Colorado, Mr. Tipton, is recognized for 5 minutes.

Mr. TIPTON. Thank you, Mr. Chairman, and I thank the panel for taking the time to be here.

I wanted to be able to get a little bit of clarity on some of the comments that I have heard in regards to a ZIP Code having an impact on assessing driving risk. Ms. Collins, does the ZIP Code impact what kind of rate you are going to be paying?

Ms. COLLINS. Thank you, Congressman. Territorial rating, especially in dealing with auto insurance and other areas of insurance, is important in that it helps to identify areas of risk. For example, a risk associated with auto insurance is density. The number of drivers on the road, the population on the road, all factor into the risk of severity of accidents and frequency of accidents. So, a car located in a rural plains State is not going to have the same risk profile as a vehicle in a downtown metropolitan area. So yes, to answer your question, it is an important factor.

Mr. TIPTON. I live in a rural area of Colorado, so I am probably going to have a lower rate than somebody driving in Washington, D.C.?

Ms. COLLINS. Yes. I think to the extent that the factor is utilized on territory, yes, that situation, that factor would show a lower risk.

Mr. TIPTON. I did want to follow up with you a little bit as well in regards to the credit scoring. You noted it is not the credit score but being able to use it as a predictive model. Can you expand on that a little bit?

Ms. COLLINS. Sure. A credit-based insurance score is a score that uses pieces of a credit report to develop an overall insurance score that relates, and directly relates to the risk of insurance loss. And the studies that have been done on credit-based insurance scores overwhelmingly show that it is not just predictive, it is overwhelmingly predictive, and is one of the most predictive factors of insurance loss that exists.

Mr. TIPTON. So the credit information, as you describe it, applied correctly, can actually benefit the consumers by lowering some rates?

Ms. COLLINS. Yes. Actually, the Arkansas study on credit-based insurance scores showed that the vast majority of drivers benefitted from the use of credit-based insurance scores.

Mr. TIPTON. Thank you. And you also spoke to the study bill that is being discussed here to a degree today. But studying some of the underwriting factors nationally, this would make it public information, is that accurate?

Ms. COLLINS. That is my understanding, yes.

Mr. TIPTON. Okay. That would be an unprecedented step for the Federal Government, wouldn't it?

Ms. COLLINS. To my knowledge, yes.

Mr. TIPTON. So following that line of thought, what would be the impact of disclosing this proprietary underwriting information beyond the insurance market as a whole?

Ms. COLLINS. In my opinion, it would create, at minimum, a dampening effect, but realistically, potentially the end of innovation in auto insurance. It would create a situation in which insurers are not able to develop new ways of assessing risk or ways to develop value propositions to their customers or to their potential customers. So, I think it would demonstrably harm the market.

Mr. TIPTON. So just saying, why have a problem with a study bill, effectively, this study bill would have a dampening effect and would probably impact nationwide some of the innovation that is needed in the insurance market?

Ms. COLLINS. I think it would be wildly detrimental to innovation, yes.

Mr. TIPTON. Okay. We do have a well-established Federal statutory precedent in this country in regards to regulation matters relating to insurance belonging to the individual States. Our States have had the authority, as the superintendent had noted, to be able to develop the insurance market within their borders. We just passed, in the Views and Estimates, out of the hearing this last week, a proposal regarding some of the State impacts that we are going to be seeing, at least on the Republican side, to be able to have it at the State level.

So, Ms. Collins, would the study bill before the committee today jeopardize the State-based approach to regulation?

Ms. COLLINS. Yes, I do believe it would. It certainly does not take into account the 10,000 regulators across the United States that have created and maintained such a powerful insurance market in the States, and I think it would demonstrably undermine the State-based system and how well they regulate the market now.

Mr. TIPTON. Thanks. And finally, Superintendent Dwyer, almost every State in the country has adopted a law requiring insurance premiums not to be excessive, inadequate, or unfairly discriminatory. Could the public disclosure of proprietary underwriting standards undermine the foundation of fairness that individual States have implemented?

Ms. DWYER. Yes, it could. Normally, those types of factors are not public.

Mr. TIPTON. Great. Thank you. My time has expired, Mr. Chairman.

Chairman CLAY. The gentleman's time has expired. I now recognize the gentleman from Missouri, Mr. Luetkemeyer, for 5 minutes.

Mr. LUETKEMEYER. Thank you, Mr. Chairman. And I welcome the witnesses. I guess I want to start with, what is the definition of insurance? I think it is the company accepting the risk to pay the losses that are incurred as a result of an automobile accident. Is that a fair explanation of what insurance is, and the risk that you are taking?

Ms. Collins, you made the comment that the companies' rate for risk, and I think two or three of you already said that the rate factors are actuarily sound, so they can't go out, and there are laws in place that prohibit discrimination for certain things. So after

that, we get to the point where, okay, how do we charge for the risk?

In flood insurance, we have one rate. If you have a $50,000 house, you pay $750. If you have a $250,000 house, you pay $750. Mr. Heller, do you think that is fair?

Mr. HELLER. The one rate for flood insurance, I don't think that is exactly how it works, because it is relative to where you are vis-a-vis the flood map.

Mr. LUETKEMEYER. It is pretty well one rate. We do not discriminate between the size of the risk. Do you think having one rate across-the-board is fair? That is my question.

Mr. HELLER. I think that one rate would be an acceptable way to go if we are trying to create the biggest pool to bring people in. I think it is better to—

Mr. LUETKEMEYER. If you have a $250,000 house, you would rather pay less for your insurance than me, who would have to subsidize your rate. Is that what you are saying?

Mr. HELLER. No. I guess I am not following your question, because there are different rates depending on what—

Mr. LUETKEMEYER. Okay. Let's throw this out, since you are not getting it right. Okay. If you want to have one rate for everything—

Mr. HELLER. Oh, I see.

Mr. LUETKEMEYER. Okay. So, we are taking car insurance and everybody pays the same rate, period, across-the-board. Is that fair?

Mr. HELLER. If that would be the case, no. It would not be fair—

Mr. LUETKEMEYER. In other words, if my son—he is a lot older than 19, but let's say he is 19 and he has two DWIs and two wrecks on his record, and he buys a new Corvette. Do you want to pay the same rate as he does?

Mr. HELLER. No. I believe that his risk would be higher—

Mr. LUETKEMEYER. Okay. So we agree that there are rating factors that should be an important part of this discussion.

Mr. HELLER. That is absolutely right.

Mr. LUETKEMEYER. Okay. So where do we go with the rating factors? We have laws that say certain ones are legal and certain ones are not.

Mr. Poe is concerned about some of the rating factors because his company is getting beat by Geico and Progressive because they decided to find different rating factors that they could use to be able to frame their rates differently.

So, in a free market society, if I like Snickers more than anybody else, and insurance companies decide they want to go out here and figure out if people who eat Snickers candy bars are more or less likely to have a wreck, do you think that is a good rating factor, if they want to take the risk on whether that is right or not?

Mr. HELLER. Sir, the government—

Mr. LUETKEMEYER. Answer the question. Yes or no?

Mr. HELLER. They don't require people to buy Snickers. They do require people to buy auto insurance. It is a different market.

Mr. LUETKEMEYER. Mr. Heller, they require them only to buy liability and uninsured motorist, which is for somebody else, not for you, okay.

Mr. HELLER. And yet they discriminate based on their—

Mr. LUETKEMEYER. Do you want to be hit by an uninsured motorist and suffer the loss for lots and lots of health issues, and not have insurance to pay for that, not have somebody reimburse you for your car that has been damaged, if you have a brand-new Cadillac? Is that fair? Yes or no?

Mr. HELLER. That is not fair, and that is why we want to get more people—

Mr. LUETKEMEYER. Okay. This is why—

Mr. HELLER. —into the market so they are not uninsured.

Mr. LUETKEMEYER. —the States have mandated that you have at least liability insurance. Now, if you have full coverage, that is required by your lienholder, who, guess what, they want to be able to pay for that car if it has a wreck, right? So, let's don't go there now and say you are required to do this. You are not required to have full coverage unless you want it, on your own car, unless a lienholder is there.

Mr. HELLER. And, sir, all of the rate—

Mr. LUETKEMEYER. Is that right? Am I correct?

Mr. HELLER. —quotes that I gave are for liability-only coverage. We discriminate on liability for credit. You use your credit score just for the liability policy.

Mr. LUETKEMEYER. I am not there yet. I am talking about different criteria, and we are going to get there. Just a second.

Mr. HELLER. Let's only talk about liability-only, the one that you are required to buy. I think that is fair.

Mr. LUETKEMEYER. We are talking about different rating factors here. My comment and question to you is, if I, as a business in the free market, want to decide if anybody who eats Snickers bars gets a discount because I think they are going to be more—because of the sugar high they are on, they will be able to react more quickly. Therefore, I think they are going to be a better risk. Is that okay for me to do that?

Mr. HELLER. Not in the auto insurance market, because there is no justification for that.

Mr. LUETKEMEYER. If I can actuarily show that, if these ladies over here said I could actuarily show that, is that fair?

Mr. HELLER. No, I don't think that would be fair.

Mr. LUETKEMEYER. You don't believe in actuarily having sound rates?

Mr. HELLER. I think that what we need to do is we need to focus our rates on a product that we require people to buy, based on driving rate.

Mr. LUETKEMEYER. No, you are missing the whole point. You are going off on another tangent, sir.

Mr. HELLER. Forgive me.

Mr. LUETKEMEYER. Sir, I have the microphone. I'm sorry. It is my question.

Ms. Collins, do you think I am going down the right road here?

Ms. COLLINS. Yes, Congressman. I think it makes perfect sense. If you believe that rates should match risk then it makes no sense to—

Mr. LUETKEMEYER. In a free-market society, is it okay for the company who decides they want to slice the bread thinner, if they

come out with a different way to look at this that is within the law, and they want to decide if I can eat a Snickers bar and I am more astute behind the wheel, I can be a better driver, is it okay for them to give me a discount, and let somebody else have to pay more? Is that fair?

Ms. COLLINS. So long as the factors are actuarily sound and—

Mr. LUETKEMEYER. And you approve, and they can actually show that I am a better driver because of that?

Ms. COLLINS. We would support that, yes.

Mr. LUETKEMEYER. Thank you very much. I yield back.

Chairman CLAY. The gentleman's time has expired. I now recognize the gentleman from Ohio, Mr. Davidson, for 5 minutes.

Mr. DAVIDSON. I thank the chairman. And I thank the witnesses for coming, and I'm hoping to learn more for the good of the American people and the preservation of a very sound State-based automobile insurance market.

Here we are yet again, visiting an issue that this committee held a hearing on last year, and multiple bills and amendments have failed since then. When we discussed this topic last year, Congresswoman Beatty from Ohio put it well. She said, "This seems like a Michigan problem to me. Why should we use Michigan, with a deeply flawed system, as evidence that the Federal Government needs to usurp State laws and change how insurance rates are calculated?"

I agree with her. Auto insurance costs an Ohio driver, on average, just $952 a year, compared to $2,484 a year in Michigan. Better yet, auto insurance costs $1,277 a year, on average, in Cleveland, whereas it is $5,414 a year in Detroit. Now, these two cities have similar demographics, and these figures aren't mined. They are figures that Josh Rivera, from the University of Michigan, gathered and wrote about. I would like to enter his report into the record.

Chairman CLAY. Without objection, it is so ordered.

Mr. DAVIDSON. I thank the chairman.

So the conclusion I am supposed to draw from the dialogue here, or from some of my colleagues, is that to use credit scoring data by auto insurers amounts to some sort of racist or misogynistic conspiracy by the auto industry, in response to higher auto insurance rates in Michigan. Why not Cleveland? Is there no one with a low credit score in Cleveland? Just Detroit? They have low credit scores in Detroit and nobody in Cleveland has low credit scores? There are no racial minorities in Cleveland? There are no men and women differences in Cleveland versus Detroit? It makes no sense to disrupt the system based off of these arguments.

I would like to flesh out Congresswoman Tlaib's argument. We keep on discussing driving history only for pricing. There are a lot of folks who believe that minorities are more likely to be pulled over, ticketed, or arrested. Does that factor in? There are a host of factors that could explain some of these differences, and the question is, can insurance companies take into account actuarially sound data in their pricing models?

So Ms. Collins, what is the right way to factor these considerations in under actuarial standards and the bounds of the law?

Ms. COLLINS. Thank you, Congressman. Insurance companies look at a variety of factors to try to identify risk as closely as they can with the cost that would be incurred, and the ability for them to be able to do that is what keeps the market functioning. And the issues associated in Michigan have really very little to do with that process, as we noted earlier, and the medical costs associated in that system.

So to directly answer your question, the impact of not being able to match that rate to that risk would cause uncertainty for insurance companies, and that would lead to a direct rise in costs.

Mr. DAVIDSON. Thank you for the explanation and further clarification that, frankly, my colleague from Michigan is trying to deal with State law by imposing a Federal standard that could make Ohio as bad as Michigan, frankly. Instead, perhaps we could consider how the State legislature of Michigan could change the liabilities that insurers could price, that individuals could have in the market in Michigan. So that would be in the statehouse in Michigan, not here in Congress, in Washington, D.C.

My colleague would argue that we should do away with other factors and just use driving history, but if it is true, then how do we price in factors like liability in States like State law? We should be able to use sound practices and we should be able to do it based on the law of the jurisdiction where the insurance coverage is being priced.

It seems to me that what my colleagues are actually wanting is a sane price regardless of risk. They want to socialize the entire risk pool so that everyone is treated the same.

However, risk-based pricing is a very basic lending principle, and publishing insurers' proprietary underwriting data will crush competition within the auto insurance industry. Only those who have not spent time in the business, and haven't developed their own intellectual property, would suggest doing away with it.

I yield back.

Chairman CLAY. The gentleman yields back. I now recognize the gentleman from North Carolina, Mr. Budd, for 5 minutes.

Mr. BUDD. Thank you for the time, Mr. Chairman. Also, thank you for the time in your district. It has a very nice barbecue restaurant. So, I look forward to having you in North Carolina so you can try some Davidson County, Lexington-style barbecue.

Chairman CLAY. Thank you.

Mr. BUDD. I also want to thank the witnesses for being here today. I have spoken on one of these two bills that we are considering, multiple times, and it is clear there isn't support in this committee for Congress to pull credit scoring data out of auto insurance underwriting. So as I mentioned in the past, auto insurance costs about $85 a month, on average, and that is in North Carolina. That is the fourth-lowest rate in the country. As we say in my district, and probably elsewhere, "If it ain't broke, don't fix it."

So that said, the FAIR Study Act is new, and I have done my due diligence. While you call it a study bill, it is anything but, and it is certainly not fair, so quite a misnomer here.

Compliance costs aside, the bill directs the Federal Insurance Office to publish all of the proprietary information that it collects from auto insurers on an annual basis. The bill would destroy the

foundation of competition in the auto insurance market. Everybody who has seen a football game, or just anything on TV, has seen 15 ads for auto insurance, and they inherently know that it is a competitive market, with lots of options for consumers. Luckily, there is no way to quantify that.

The Department of Justice, which is responsible for enforcing anti-trust laws, uses something called the Herfindahl-Hirschman Index. I have a couple of business degrees from pretty schools and I had never heard of that. But I have seen it recently with some bank mergers, and now I see it related to this.

So when the score gets to 2,500 or above, the index signals market consolidation that is actually harmful to consumers, so it is a helpful index. But the Herfindahl-Hirschman Index for the property and casualty insurance industry—remember now, 2,500 is harmful—but for the auto insurance industry, it is 302, and that was in 2018. So, very low. And that is down from 346, also another low number, in 1998. So, it has gotten even better in 20 years.

Ms. Collins, can you explain for the committee the actual impact of the FAIR Study Act, if it were enacted? If the FIO published proprietary underwriting information from every participating auto insurer, what kind of pressure would it create for consumers?

Ms. COLLINS. Thank you, Congressman. If proprietary information were to be made public, I believe that it would be hugely detrimental to consumers. As I noted at the outset, consumers are benefitted by a highly competitive market, which the auto insurance industry is, in that they compete against each other to most accurately match rate to risk, and that benefits consumers both in their choice in products and the level of protection that they feel that they need, and serves to keep prices as low as possible.

And so, removing the ability of insurance companies to compete against each other to try to find the most effective ways to match rate to risk would serve to take away those benefits to the consumers.

Mr. BUDD. Thank you for that. My friends across the aisle claim that they want to stop too-big-to-fail financial institutions from forming or market monopolies taking hold, yet here is an example of a proposal that would kill competition in one of the most competitive markets in the country. So, Economics 101, the competition brings down prices for consumers—we all know that—which is what I thought was the original goal of these bills.

But the irony is that these bills would actually hurt instead of help the policyholders. By eliminating and studying ways to reduce a vast amount of factors used in underwriting, things which would help these companies become more competitive and better consumers, including making proprietary underwriting information publicly available, what you are actually doing is raising rates for consumers who currently shop for insurance, again, in this very competitive market.

So, a question. If insurance would have to price risk based on guesswork, it is an obvious conclusion that the least risky drivers will have to subsidize the riskiest drivers. So, Ms. Collins, how would you respond to this?

Ms. COLLINS. Yes, Congressman, we would agree. By making insurance companies guess at what their exposure would be in order

to remain solvent, they would necessarily have to increase rates just to meet their statutory obligation to their policyholders. So, we totally agree with that sentiment.

Mr. BUDD. Thereby hurting consumers.

Ms. COLLINS. Absolutely.

Mr. BUDD. Thank you for your time.

Chairman CLAY. The gentleman yields back. Now, we go to the gentleman from Wisconsin, Mr. Steil, for 5 minutes.

Mr. STEIL. Thank you very much, Mr. Chairman. Thank you for holding today's hearing, and thank you to our witnesses for being here.

Can I just start off by getting a show of hands if you believe that non-driving-related factors are predictive of risk?

[show of hands]

Mr. STEIL. Three out of five, maybe.

Mr. HELLER. There are probably some that have some value, but not the ones we have spoken about today. I do not believe they are predictive of risk.

Mr. STEIL. Very good. I appreciate that insight. Ms. Collins, I would like to ask you, if we look at drivers' actual records, driving violations, amount of severity, and then you start to look at if there are other factors that an auto insurer might need to account for in the underwriting to cover operating costs such as the regulatory cost of providing insurance in a jurisdiction, the severity of auto accidents and the injuries they cause, the prevalence of auto theft, the likelihood of filing an auto claim, the probability of policyholders defaulting on their premiums or any debt owed as a result of an accident, or the rate of uninsured motorists nevertheless driving in any given State, and since insurance companies have a solvency obligation to operate in a safe and sound manner, should companies be prohibited by Federal law from including any of those pricing inputs or other pricing inputs that you are looking at into their underwriting models?

Ms. COLLINS. Thank you, Congressman. Absolutely not. They should not be prevented from doing that. The objective of underwriting, again, is to match most closely the premium and the rate to the risk that is represented, and the more tools that are actuarily sound and on point to get closer to that ideal, the more successful that insurance company is going to be in getting the right product to the right consumer's risk, and be able to write broader risks for more consumers.

Mr. STEIL. Thank you. And I think it is worth pointing out the challenges of when we socialize risk. And so, all things being equal, with the average consumer's rates increase, companies can no longer use predictive and approved factors. In particular, in this instance we are talking about credit history.

Ms. COLLINS. Yes, Congressman. Removing the innovation and the trend towards finding new ways to identify and measure risk would take us backwards in the United States to rather a crude version of underwriting, and it would harm consumers in that the insurance company would have to guess, again, to use the other Congressman's word, at what the risk might be, and therefore the lower-risk drivers would necessarily be subsidizing the higher-risk drivers in order to create that money for the pool to ensure that

the insurance company could meet their obligation to their policyholders.

Mr. STEIL. And as we talked today, and we heard some of my colleagues discuss involving the Federal Government in what has traditionally been a State-regulated agency, could you provide a little color and describe the process by which companies identify and evaluate risk factors? And in particular, can you highlight the role that State regulators are playing in permitting the use of specific rating factors?

Ms. COLLINS. Insurance companies use a multitude of risk factors. Not all insurance companies use all factors. As we have noted, the actuarial science shows that it is most successful when a combination of factors is in play. And this is important in the context of State regulation, because the State regulators review how insurance companies combine those factors, as well as the individual factors themselves, to ensure that nothing is unfairly discriminatory and that rates are not excessive or inadequate.

Mr. STEIL. So State insurance regulators are analyzing what constitutes unfair discrimination and what is prohibited at the State law level?

Ms. COLLINS. Absolutely, and they do so robustly.

Mr. STEIL. I appreciate your testimony here today, and I yield back.

Chairman CLAY. The gentleman yields back. At this time, the gentleman from California, Mr. Sherman, who is also the Chair of our Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets, is recognized for 5 minutes.

Mr. SHERMAN. Mr. Chairman, I have been absent from this room because we had the briefing on the coronavirus by our Vice President. I am now totally reassured, maybe, and look forward to hearing from our witnesses.

When I was 16, I was told that 16-year-olds are bad drivers. Ms. Collins, of course, 16-year-olds, when they first get their license, don't have bad driving records. Do most insurance companies charge you more when you are 16 than when you are 26, and is there a real correlation between being a new driver with a spotless record and not being a good risk for the insurance company?

Ms. COLLINS. Thank you very much for the question. Yes, there is actuarial science to show that less-experienced drivers and younger drivers do pose a higher risk of loss, and that has been studied a multitude of times. And there was a NHTSA study that showed that there are additional factors associated with age. For example, the incidence of texting while driving tends to diminish as a driver becomes more experienced and older as well.

Mr. SHERMAN. Is it a matter of driving experience? Some people get their license when they are 16. Some may first get their license when they are 26. Do most companies look at age or number of years driving or number of miles driven? Kids at my high school drove a whole lot of miles. At my wife's high school, even if you had your license, you took the subway. Is it inexperience in terms of years holding the license, inexperience in numbers of miles driven, or just age?

Ms. COLLINS. I believe that insurance companies use a multitude of those factors to form a full picture of risk, but I would defer to Superintendent Dwyer to elaborate.

Mr. SHERMAN. And while we do that, I will go to the other end of the age spectrum. When my mother was 89, she still had her driver's license. I wouldn't let me my kids drive with her. Ultimately, I persuaded her not to drive at all. She hadn't had an accident in at least a decade because she only drove like 12 miles a month. Trust me. Those are miles you didn't want to be in her car. So is it legitimate, Ms. Dwyer, for them to look at either young or old age in determining the level of risk?

Ms. DWYER. When insurance companies look at any of those factors and file them with their rating plan, they have to provide the actuarial basis. So, you can't just guess.

Mr. SHERMAN. Right. They have to show you statistics. What level of correlation or regression analysis—because some things correlate a little bit and some things are one to one. Is there any level of certainty or correlation that is necessary?

Ms. DWYER. I have an actuary look at every rate filing for automobile insurance filed in my State. I am not an actuary, so I am not absolutely sure on that. But I make sure that my actuary is satisfied with the level of correlation. So it has to be something significant, not a very vague correlation. It has to be something significant.

Mr. SHERMAN. Is there any State that prohibits looking at age or experience rather than actual tickets and accidents of that individual driver?

Ms. DWYER. I don't believe so, but we could—

Mr. SHERMAN. So as far as you know, every State would allow it? Mr. Heller?

Mr. HELLER. Thank you, Mr. Sherman, and I should mention I am also a constituent of yours, so I am happy to see you here. I believe that there are—while States don't prohibit that, there are several companies now, for example, who won't even ask how many miles you are driving, so they are not looking at some of the real, legitimate factors that do relate, that we can show the data. Instead, they turn to these other factors that we have talked about all day, like your credit score and your job title.

Mr. SHERMAN. Well, I am with the California Auto Club, and they hound me 3 or 4 times before I finally am able to remember how many miles I have on each odometer on each coast, and then they give me a discount if I get the document in on time.

Obviously, number of miles driven is important. Superintendent Dwyer, are there any States that require companies to look at such a relevant factor as how many miles do you drive every year?

Ms. DWYER. I don't believe so. However, we have that in most filings. Disclosure by the consumer is not necessarily the best way to determine that, from what I have heard from companies. They are getting this information through big data occasionally. But they are using it.

Mr. SHERMAN. No, trust me. The Chinese don't know how many miles I drive each of my cars yet, as far as I know. But if we just look at whether you have had an accident recently, we are missing out on the fact that my high school friends had terrible attitudes

towards driving, my mother had some problems, and I only drive a few miles here in Washington.

Mr. HELLER. Mr. Sherman, if I could clarify, though?

Mr. SHERMAN. I will ask the chairman if I have time.

Mr. HELLER. Oh, I am sorry. Mr. Chairman, if I could just clarify one point that was made by the superintendent, very briefly. Just that California does require that miles are used in rating. That is all. California law does require that.

Mr. SHERMAN. That is a good thing.

Chairman CLAY. The gentleman yields back. At this time, I am going to take 2 minutes to close, and in that 2 minutes, I am going to yield to my friend from Michigan, since this subject has generated quite a bit of discussion. It is her bill, so I yield to the gentlewoman from Michigan, Ms. Tlaib, for 2 minutes for closing remarks.

Ms. TLAIB. Thank you, Mr. Chairman. Look, I understand that there is a whole formula within the industry, but I feel like the formula right now has led towards discriminatory practices, because the data and information out there is very clear, and I think it is very important for all of us. And I will work with colleagues on the other side of the aisle to actually have the Federal Insurance Office look at it, whether or not there is disparate impact in this formula.

It is the Federal Government's job, and I am not trying to change State law. I am trying to ensure that people on the ground, people like my community, which is the third-poorest in the country, are not being directly discriminated against, based on these factors.

And it is sincere. It is the fact that I have seen data that it is preventing them from owning their own homes, because they are paying these high rates. But I also feel like it is very much discriminatory and dehumanizing to be asked about education level, to be asked about marital status, and to see that somehow you are now going to be treated differently, solely based on your credit score.

For me, having a driving-under-the-influence violation is a huge risk, but that person is going to pay less than the person who doesn't have a great credit score. Just the data in Florida is unbelievable, to see that somebody with poor credit is paying $3,826, and somebody with better credit is paying $1,400. What is going on here?

These are proxies, and we are not going to allow them. Mr. Heller, we have to prohibit the collection of racial data by insurance, and we do that. But these are now being used as proxies.

Prove me wrong that they are not, by allowing a disparate impact study to actually happen. What are you afraid of it showing? Prove us wrong by allowing the Federal Insurance Office to investigate this and look at this.

Thank you so much, Mr. Chairman, for this hearing. I know many of my residents at home really do appreciate this.

Chairman CLAY. The gentlewoman yields back, and I now recognize the ranking member of the subcommittee, Mr. Stivers.

Mr. STIVERS. Thank you, and I will be fairly brief. I will conclude as I started. Thank you to the chairman for holding this hearing.

Everyone in this room is opposed to discrimination. There was great testimony by Ms. Dwyer about what our insurance commis-

sioners at the State levels are doing to make sure we stop discrimination based on factors that they shouldn't use to discriminate. But we also need to figure out how to create an insurance system that is priced fairly for everyone.

And generally, under McCarran-Ferguson, I trust our State-based regulators to do that job. I think there have been some really good studies that have been done, including the Stanford University study that shows if you move away from factors and only do driving factors, you actually make the situation worse for African Americans and other folks who face some discrimination in the way that they are pulled over and the way they are ticketed.

So, there may be no perfect system. There may be no perfect underwriting factors. And I am not saying that there isn't a study we couldn't work on. But the study as it is worded in this bill that we talked about today has a lot of conclusions that aren't based on any facts. And I wouldn't want to support a study that already has conclusions in it. That is not fair. A study should be a study that looks at things fairly, and then makes conclusions based on what is observed, not conclusions based on when you authorize the study.

So while I would be willing to work on that with the gentlelady from Michigan, the chairman or the gentlelady from Michigan, I think we would have to do that in an appropriate way that doesn't start with conclusions. It might end with conclusions, but it shouldn't start with conclusions, and that is my concern about this study that was proposed today.

I think there has been a lot of great testimony by all of the witnesses. Again, I want to thank all of the witnesses for your perspectives, and while I trust our State-based regulators, I am not saying there is not a Federal role. I would want to make sure if there was a Federal role, it was done in a thoughtful way, without conclusions up front. I yield back, Mr. Chairman.

Chairman CLAY. The gentleman yields back, and I would like to thank our witnesses for their testimony today.

The Chair notes that some Members may have additional questions for this panel, which they may wish to submit in writing. Without objection, the hearing record will remain open for 5 legislative days for Members to submit written questions to these witnesses and to place their responses in the record. Also, without objection, Members will have 5 legislative days to submit extraneous materials to the Chair for inclusion in the record.

This hearing is now adjourned.

[Whereupon, at 3:45 p.m., the hearing was adjourned.]

A P P E N D I X

March 4, 2020

Statement of

Erin Collins

Vice President – State Affairs

On Behalf of the

National Association of Mutual Insurance Companies

to the

United States House

Committee on Financial Services

Subcommittee on Community Development, Housing, and Insurance

Hearing on

Drivers of Discrimination: An Examination of Unfair Premiums, Practices, and Policies in the Auto Insurance Industry

March 4, 2020

The National Association of Mutual Insurance Companies (NAMIC) is pleased to provide comments to the U.S. House Financial Services Committee Subcommittee on Community Development, Housing, and Insurance on the use of risk-based pricing in the auto insurance.

NAMIC membership includes more than 1,400 member companies. The association supports regional and local mutual insurance companies on main streets across America and many of the country's largest national insurers. NAMIC member companies write $268 billion in annual premiums. Our members account for 59 percent of homeowners, 46 percent of automobile, and 29 percent of the business insurance markets. Through our advocacy programs we promote public policy solutions that benefit NAMIC member companies and the policyholders they serve and foster greater understanding and recognition of the unique alignment of interests between management and policyholders of mutual companies.

Introduction

It is important to state at the outset that NAMIC is strongly opposed to broad prohibitions on the use of legitimate and predictive underwriting/rating tools. In particular, NAMIC opposes H.R. 3693,[1] the Prevent Automotive Insurance Discrimination Act (PAID Act), and H.R. 1756,[2] the Preventing Credit Score Discrimination in Auto Insurance Act. The flawed premise underlying these legislative proposals is an unsubstantiated allegation of bias and inherent unfairness arising out of the use of certain information to underwrite and rate automobile insurance. We respectfully encourage the Subcommittee to reject the legislative proposals being discussed today and to reaffirm the state-based insurance regulatory system that has served consumers so well for more than 150 years. We hope that we can demonstrate to you that additional legislation in these areas is unwarranted, unnecessary, and may unfortunately cause a great deal more harm than any alleged positive effect.

The goal of NAMIC's written statement is to provide high-level background information on the risk-based bedrock of solid insurance underwriting and pricing as well as the legal and regulatory structure surrounding insurance activity. Consistent, balanced, efficient, and effective regulation of solvency and market conduct are essential components of an insurance regulatory structure that promotes sound market principles. Within these tenets is the principle that a healthy insurance market consists of inter-industry competition, fueled by accurate underwriting and pricing. Regulatory environments governed by these guideposts facilitate consumers having a broader range of insurance products and services at fair and accurate prices while fostering financial stability. Conversely, regulatory environments that undermine these principles typically see a reduction in availability and affordability. Consumers

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[1] https://www.congress.gov/bill/116th-congress/house-bill/3693?q=%7B%22search%22%3A%5B%22hr3693%22%5D%7D&s=2&r=1
[2] https://www.congress.gov/bill/116th-congress/house-bill/1756?q=%7B%22search%22%3A%5B%22hr1756%22%5D%7D&s=3&r=1

and insurers both have an interest in a system of insurance supervision that ultimately allows a vibrant market where competitive products and services are available for consumers.

While some may have well-intentioned goals in putting forth expansive legislative proposals, we caution against falling victim to the law of unintended consequences. It has been demonstrated time and time again that such underwriting restrictions harm policyholders by driving up insurance costs across the board.

Risk-Based Rating

An insurer's main business involves providing consumers financial protection against their risks. The goal of insurance underwriting is to correlate rates for insurance policies as closely as possible with the actual cost of claims. The more accurately a company targets the actual costs, the better they are able to manage their book of business, which in turn enables them to write more products for more individuals, in more perils. Simply put, accurate underwriting enables more coverage for consumers.

For insurers, differentiating between risks in underwriting and rating is essential to meet their responsibility to pay claims and is accomplished by risk assessment, classification, and selection to achieve a sustainable portfolio at an appropriate premium. Individuals that an insurer concludes present lower risks of loss appropriately pay less per unit of insurance than individuals who present higher risks of loss. Approaches contrary to risk-based pricing – like those contained in these bills – are a direct assault on actuarial science and threaten to suppress consumer choice by doing damage to the entire auto insurance market.

Today, to comply with state insurance laws and regulations and to offer competitive rates, an auto insurance company must be able to assess risks and price policies accurately according to the likely cost of claims generated by those policies. To be clear, under state law, insurers are prohibited from setting rates that are excessive, inadequate, or unfairly discriminatory against any individual.

"Unfair discrimination" has a very specific meaning in state insurance codes, and its use is a prohibition that insurers have been subject to for many years. According to model legislation developed by the National Association of Insurance Commissioners (NAIC), there are essentially two ways in which an insurer could engage in unfair discrimination (which is explicitly prohibited): (1) making underwriting/rating distinctions "between individuals or risks of the same class and essentially the same hazard;" or (2) making underwriting/rating decisions that are unsupported by "the application of sound underwriting and actuarial principles related to actual or reasonably anticipated loss experience."[3] Reviewing these standards, it should be clear that the "unfair discrimination" standard is a term of art defining a well-established, and

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[3] "Unfair Discrimination," Sec. G(3), Unfair Trade Practices Act, NAIC Model Regulation Service, January 1993, pp. 880-884. *MDL-880.*

carefully-constructed, risk-related approach states use to directly regulate insurers.[4] This baseline standard occupies the field and state insurance departments aggressively ensure that these standards are met within their markets.

Put another way, "discriminating"/differentiating on the basis of risk is regarded by insurance experts and regulators not only as fair, but necessary.[5] In fact, pricing programs of most insurers depend on making cost-based distinctions based upon a number of different risk factors. All things being equal, the consumer who reflects a higher risk based on these factors will pay more. The fundamental goal is to match risk to rate as accurately as possible. This is done through actuarial science and consumers benefit from having as many factors as possible considered.

NAMIC seeks to preserve the ability of insurers to rely on foundational principles of actuarial soundness. The underpinning of insurance underwriting and rate-making is classifying policyholders according to predicted risk of loss by using objective and statistically supported information – the more accurate the risk assessment, the more accurate and appropriate the rate charged. Insurers make decisions based on actuarial and business principles that treat similar policyholders similarly. In other words, this process seeks to prevent unfair discrimination or capriciousness. In fact, by banning the use of risk factors that are actuarially justified – as the above referenced bills seek to do – you are requiring that insurers charge rates de-linked to risk. A lower risk individual will have to pay a higher rate just as a higher risk individual will get a lower rate. This is, at its basic, asserting an unfair discrimination standard.

Factors

Making predictions is essential - insurance differs from most other products because the actual cost of providing insurance is unknown at the time the product is offered and the customary

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[4] NAMIC has explained the term "unfair discrimination" in the context of insurance regulation previously and will do so in greater detail below. Before turning to that background, it may be helpful to consider what is **not** intended. While used as a term of art in laws, regulations, actuarial standards, and articles for years, the wording seems unfortunate because those from outside the industry may default to interpreting activity in the context of the everyday meaning of "discrimination," a practice that is repugnant and contrary to our notions of fairness. The variance between the everyday meaning and the insurance standard begins with a working definition of "discrimination." The everyday meaning could be considered "prejudicial treatment of people, especially on the grounds of income, race, national origin, etc." The insurance meaning is more akin to a secondary definition of distinguishing and could be considered "recognition and understanding of the difference between one risk and another without consideration of the categories [above]." NAMIC highlights this not to diverge from the long-established definitions of "unfair discrimination," but to acknowledge that the use of this meaning could pose some challenge in ensuring a common vocabulary in a contemporary dialog of these issues outside of the industry's functional regulator.

[5] A leading textbook for students of insurance regulation instructs that "in insurance, discrimination is not necessarily a negative term so much as a descriptive one. For insurance, fair discrimination is not only permitted, but necessary." See Kathleen Heald Ettlinger. *State Insurance Regulation* (Insurance Institute of America, 1995), pp. 29-30.

laws of supply and demand do not apply. To most accurately make these predictions, various factors are used to analyze a risk. Looking back at historic losses helps to forecast future losses, but prior claims alone do not provide enough information to serve as an adequate predictor.

In today's auto insurance market, a multitude of risk-predicting factors may be considered, including things like: driving history, policy limits, multi-policy discounts, vehicle information, vehicle safety equipment, age, credit history, miles driven, etc. Whether and how particular factors are used differs by insurer. These underwriting and rating factors are actuarially based tools by which to assess risk and forecast loss. They are ***correlative***, in that they are actuarially shown to have an association with loss – the two things tend to occur together. Factors do not need to demonstrate ***causational*** relationships. A causational relationship would indicate that a factor *results in* a loss – something that does not necessarily exist in this context. Even a fact pattern of a dozen prior speeding tickets and prior accidents does not *result in* a future loss. Any assertion that factors should be held to a causational standard fundamentally misunderstands the methodology of actuarial science and would exclude practically every exercise to try to assess risk.

Limiting risk factors and moving away from setting prices based on actuarially justified factors may stifle competition and may deprive consumers of the benefits that naturally flow from competition. Markets are healthier – with more options for consumers – when as many different predictive factors as possible are utilized. NAMIC members believe that competitive markets are the most effective way to ensure low prices, widespread availability of the product, superior service, and product innovation.

Furthermore, unintended consequences may result from severely restricting factors, as contemplated in these bills. In reviewing a factor, data is analyzed to determine its potential correlation with risk. A prohibition on the use of gender provides a helpful example. Data and/or studies may show that as a group, younger males may be more likely to engage in riskier driving behavior and/or that they may be more likely to have been involved with a greater number of accidents. Data from the U.S. Department of Transportation National Highway Traffic Safety Administration supports this conclusion. They found: "motor vehicle crash fatalities were higher for males than females in all age groups."[6] To void this information would seem to mean that females would pay more for auto insurance if this factor were banned.

Credit information provides another helpful example. Credit-based insurance scores now have been used by underwriters/actuaries for a few decades to more accurately assess risk and price insurance coverage. Insurance scoring provides an objective, fair, and consistent tool that insurers use with other information to better predict the likelihood of future claims and the cost of those claims. Credit-based insurance scoring is neutral on its face with respect to income, race, and ethnicity, and it is applied neutrally by insurers. The same credit standards

[6] https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/810853

are applied to all consumers. In other words, contrary to assertions by some of its opponents, the tool is actually an objective means of affording equal treatment in the underwriting process.

Multiple government agencies as well as others have reviewed the use of credit-based insurance scores precluded under this bill and have determined that they help insurers to better assess risk and to develop rates that are more actuarially accurate; correlate to risk of loss; and/or are not unfairly discriminatory:

- The Federal Trade Commission (FTC) study concluded that insurers' "use of credit-based insurance scores may result in benefits for consumers. For example, scores permit insurance companies to evaluate risk with greater accuracy, which may make them more willing to offer insurance to higher-risk consumers for whom they would otherwise not be able to determine appropriate premium. Scores also may make the process of granting and pricing insurance quicker and cheaper, cost savings that may be passed on to on to consumers in the form of lower premiums."[7]

- The Vermont Department of Financial Regulation (DFR) found: "In general, [ ] policyholders whose premiums are based on credit-related insurance scores tend to pay lower annual premiums than policyholders whose premiums do not include insurance scores."[8]

- The Nevada Insurance Division conducted a study on credit-based insurance scoring and said that their investigation "corroborates the insurance industry's contention that the majority of policyholders benefit from the use of credit scoring."[9]
- The Arkansas Department of Insurance looks regularly at the use and impact of credit in personal lines. In its review of 2016 data, it determined that "80% of consumers either received a discount for credit or it had no effect on their premium."[10]

- The Texas Department of Insurance (TDI) study found that "for both personal auto liability and homeowners, credit score was related to claim experience even after considering other commonly used rating variables. This means that credit score provides insurers with additional predictive information distinct from other rating variables. By using credit score, insurers can better classify and rate risks based on differences in claim experience."[11]

- The Virginia State Corporation Commission Bureau of Insurance studied credit use in 1999 and again in 2016. Among the items considered, the Bureau reviewed credit-related consumer complaints and inquiries. Based on this information, it concluded that "it would be difficult to conclude that

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[7] Federal Trade Commission: Report to Congress on Impacts on Consumers of Automobile Insurance (2007): https://www.ftc.gov/sites/default/files/documents/reports/credit-based-insurance-scores-impacts-consumers-automobile-insurance-report-congress-federal-trade/p044804facta_report_credit-based_insurance_scores.pdf
[8] Vermont Department of Financial Regulation: Study of Credit-Based Insurance Scoring (2016).

[9] "Report on the Use of Consumer Credit and Loss Underwriting Systems," Nevada Dept. of Business & Industry, Division of Insurance (2005).
[10] Report to the legislature, "Use and Impact in Personal Lines Premiums Pursuant to Ark. Code An. Sec.23-67-415" (2017): https://insurance.arkansas.gov/uploads/resource/documents/2017credit.pdf
[11] Texas Department of Insurance, "Supplemental Report to the 79th Legislature: Use of Credit Information by Insurers in Texas: The Multivariate Analysis" (2005): https://www.tdi.texas.gov/reports/documents/credit05sup.pdf / https://www.tdi.texas.gov/reports/credit3.html

PPA [private passenger automobile] insurance policyholders are unfairly burdened by insurers' use of consumer credit information or insurance credit scores.[12]

- A study out of the McCombs School of Business found: "The correlation between credit score and relative loss ratio is .95, which is extremely high and statistically significant. The lower a named insured's credit score, the higher the probability that the insured will incur losses on an automobile insurance policy…"[13]

- The early EPIC Actuaries, LLC study found: "Insurance scores are among the three most important risk factors for each of the six automobile coverages studied."[14]

Finally, having multiple predictive factors available for use helps to broaden the impact of any single factor. No single factor has yet been discovered which accurately measures the totality of risk represented by each insured. The state of today's actuarial science is that the most accurate risk assessment is achieved through a combination of risk factors. Every market participant understands it is in the best interest of its policyholders to have an optimal mix of factors for accurate pricing, which is also necessary to remain competitive in what is arguably the most competitive line of property/casualty insurance right now.

Market Competition Benefits Consumers

Auto insurance coverage is widely available in a highly competitive marketplace. According to S&P Global Market Intelligence, concentration in the property/casualty insurance sector as measured by the Herfindahl-Hirschman Index (HHI) decreased from 354 in 1997 to 297 in 2007. By 2017, the index increased very slightly to 301. The U.S. Department of Justice classifies any market with an HHI under 1,500 as unconcentrated and any market with an HHI over 2,500 as highly concentrated."[15] This is indicative of the strong track record and highly competitive market in the property/casualty insurance industry due in large part to business models with robust underwriting and pricing. In the twenty-year period referenced, the market has remained in a very de-concentrated range which only benefits consumers on a daily basis.

Legislation that limits underwriting factors would be a significant change that would undermine this robust competitive marketplace. Today insurers use many different rating factors and they weigh these factors differently. With a variety of factors in use, consumers can shop; they have more choice. With fewer factors, there are fewer options, more guesswork, and higher prices for consumers borne out of necessity.

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[12] State Corporation Commission's "Use by Insurers of an Insured's or Applicant's Credit Information in Connection with Underwriting Motor Vehicle Insurance Policies" (2016): https://rga.lis.virginia.gov/Published/2016/RD331/PDF

[13] See "A Statistical Analysis of the Relationship Between Credit History and Insurance Losses," University of Texas Bureau of Business Research at the McCombs School of Business (2003).

[14] "The Relationship of Credit-Based Insurance Scores to Private Passenger Automobile Insurance Loss Propensity" (2003): https://www.ask-epic.com/Publications/Relationship%20of%20Credit%20Scores_062003.pdf

[15] https://www.iii.org/sites/default/files/docs/pdf/insurance_factbook_2019.pdf

The heavy level of competition ensures that insurers have every incentive to most accurately and appropriately match the rate to the actual risk that is represented by a driver. Those companies that predict claim costs better than their competitors are typically more successful. This market-driven incentive to accurately assess risk ensures that the price of insurance will be more commensurate with the level of risk that a particular policyholder presents.

Additionally, if an insurer is confident in the adequacy of its prices, there is a strong economic incentive for the insurer to provide coverage whether or not it is a high-risk applicant or a low-risk applicant. Because a range of factors have contributed to the improved accuracy of more risks, there may be stronger incentives to provide coverage to all consumers, including high-risk applicants, thereby improving availability of coverage. On the flip side, abandoning analytical techniques to more optimally assess or price risk, injects uncertainty about the adequacy of prices which may affect coverage availability. This would discard progress and return to the relatively basic and less precise methodologies that dominated a bygone era of auto insurance underwriting/rating. Reducing the factors that insurers use will unnecessarily inject uncertainty into the underwriting process affecting affordability and availability for many drivers across the country.

States Already Have Ability to Address Unfair Trade Practices

The McCarran-Ferguson Act (McCarran), approved by Congress in 1945, explicitly entrusts states with the authority and preeminent responsibility for regulating the business of insurance. Under the act, "No Act of Congress shall be construed to invalidate, impair or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or a tax upon such business." Under our regulatory system, property/casualty insurers across the country are subject to a comprehensive state-based regulatory and enforcement regime. Federal law or regulation that would prohibit or limit insurance underwriting factors is contrary to McCarran.

The robust state system of consumer protection regulates aspects of an insurance business such as: the company's start-up paperwork (authority and licenses), insurance products (policy forms), consistency in selection/placement (underwriting standards), product price (rate), financial responsibility (solvency), behavior (market conduct), and practices (not deceptive in claim settlement or in trade generally). This is virtually every aspect of insurance – there is no void. State departments of insurance are very active in their efforts to regulate underwriting and rating, something they are uniquely qualified to do, unlike the Federal government.

Part of consumer protection is not just ensuring that insurance premiums are not excessive, but also ensuring that they be adequate to ensure that companies have the financial ability to fulfill the promises that they make to their policyholders. Adequacy of rates requires the ability to price according to predicted losses and claim costs. When the ability to underwrite risk appropriately is dramatically impeded, financial and prudential solvency issues enter the picture. Insurers cannot on a continued basis take in less premium than they are paying out in

claims or they are at the risk of potential failure. At best, a decrease in obtaining adequate premium will be a decrease in capacity to underwrite new business, which weakens the market by lessening competition.

Stringent anti-discrimination prohibitions are also in place in the states. Beyond general laws, for insurers, rating factors must be actuarially sound in order to be used by law. State regulators already have the appropriate authority to disallow any factor that they deem inappropriate or unfair. There is no data to indicate that these provisions or their enforcement have been inadequate or lacking.

It may be helpful to turn to one of the factors contemplated for prohibition, credit-based insurance scores. The vast majority of states have adopted laws or regulations to address this tool. Many are based largely on the National Conference of Insurance Legislators' (NCOIL) Model Act Regarding Use of Credit Information in Personal Insurance.[16] It was first adopted in 2002, and later amended. Among its provisions, this Model requires upfront disclosures and adverse action notices, requires prompt remedy in case of incorrect information, prohibits use of certain information, and provides "sole-basis" restrictions. Established anti-discrimination provisions apply and it explicitly prohibits insurers from using an insurance score that is calculated using income, gender, address, zip code, race, ethnicity, religion, or an individual's nationality. Additionally, this model contains language to require consideration for "extraordinary life circumstances" – that is, events such as loss of employment, death of close family member, or divorce.

Not a single court has found the use of credit-based insurance scores within this framework to be unfairly discriminatory. Indeed, the Michigan Supreme Court rejected a regulatory effort to ban the use of insurance scores, stating: "It is difficult to see how offering discounts to some insureds on the basis of good insurance scores is inconsistent with the Insurance Code's general purpose of availability and affordability of insurance for all consumers." The court noted that a rate is not unfairly discriminatory if there is a "reasonable justification" for the differential in rates "supported by a reasonable classification system" and that there was a direct, linear relationship between insurance scores and risk for automobile policies. The Court concluded that the prohibition of insurance scoring would make insurance both less available and less affordable to Michigan residents.[17]

Again, general state regulatory mechanisms adequately ensure consumer protection against improper discrimination. For example, the market conduct process allows state insurance regulators to assess and ensure compliance with laws and regulations. Through this process, Departments may review complaints received by the company. At any time, a consumer

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[16] http://ncoil.org/wp-content/uploads/2016/04/11262015PropertyCasualtyModelAct.pdf
[17] Insurance Institute of Michigan v. Commissioner, 785 N.W. 2d 67, at 83 (Mich. 2010).

complaint to an insurance department serves as an additional flag to alert regulators to possible items to investigate.

Conclusion

In conclusion, variety in objective and cost-effective underwriting tools more accurately predicts risk of loss and improves competition in the auto insurance market, which ultimately benefits consumers. Congress should take care not to sever the critical link between risk and the underwriting/rating process by unnecessarily restricting actuarially sound factors. Passing legislation to ban the use of underwriting factors would simply disrupt and substantially weaken auto insurance markets across the country, undermine the state-based system of insurance regulation that has served the U.S. well for 150 years, and ultimately harm the very consumers such action purports to help.

Testimony of

Superintendent Elizabeth Kelleher Dwyer
Rhode Island Department of Business Regulation, Insurance Division
On Behalf of the National Association of Insurance Commissioners

Before the

Subcommittee on Housing, Community Development, and Insurance
U.S. House Committee on Financial Services

Regarding:

Drivers of Discrimination: An Examination of Unfair Premiums, Practices, and Policies in the Auto Insurance Industry

March 4, 2020

Chairman Clay, Ranking Member Stivers, and members of the subcommittee, thank you for the invitation to testify today. My name is Elizabeth Kelleher Dwyer. I serve as the Superintendent of Insurance at the Rhode Island Department of Business Regulation and I am here on behalf of the National Association of Insurance Commissioners (NAIC).[1]

We appreciate the subcommittee's efforts to explore issues related to discrimination in auto insurance. State insurance regulators are committed to preventing unfair treatment of insurance consumers and ensuring they have access to affordable auto insurance products. Protecting policyholders and addressing any unfair treatment of insurance consumers is crucial to the work we do and a bedrock principle of the state insurance regulatory framework. States have the enforcement authority, data, expertise, and understanding of local market dynamics critical to auto insurance and are therefore in the best position to determine regulatory and legislative approaches to address any discriminatory practices. Auto insurance underwriting and rate setting is at the nexus between insurer solvency and consumer protection. We therefore oppose federal legislation that would preempt state insurance regulatory authority in these critical areas and limit a state's flexibility to regulate such practices in a manner it deems appropriate for its auto insurance market.

Auto Insurance Regulation and Consumer Protections

Insurance regulators have robust authorities to address potential instances of unfair treatment of consumers, including those related to protected classes. Specifically, insurance regulators have the ability to address discriminatory practices in underwriting and ratemaking. Insurance companies use rating factors that are correlated with the risks of the insurance policyholder in order to set actuarially sound pricing. This process involves insurance companies establishing risk classifications to differentiate insurance consumers who will experience different levels of expected loss. Most states review rate filings to ensure that insurance companies are using rate factors that correlate with the risk of loss or expenses. This regulatory oversight helps ensure policyholders are charged a reasonable rate and an insurer is taking on the appropriate amount of risk to maintain their solvency to pay policyholder claims. The more underwriting factors that are used that correlate to risk of loss, the more accurate the risk assessment and rate is to that policyholder. We strive to ensure that consumers are treated fairly and to maintain the critical balance between insurer solvency and product availability and affordability.

[1] As part of our state-based system of insurance regulation in the United States, the National Association of Insurance Commissioners (NAIC) provides expertise, data, and analysis for insurance commissioners to effectively regulate the industry and protect consumers. The U.S. standard-setting organization is governed by the chief insurance regulators from the 50 states, the District of Columbia, and five U.S. territories. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer reviews, and coordinate regulatory oversight. NAIC staff supports these efforts and represents the collective views of state regulators domestically and internationally. For more information, visit www.naic.org.

Our state insurance regulatory framework recognizes that certain risk classifications, even when accurately correlated with risk and predictive of loss from a purely actuarial perspective, may be inconsistent with other public policies and also specifically provides regulators the authority to ensure that rates are not "excessive, inadequate, or unfairly discriminatory."[2] It is also worth noting that some states prohibit the use of credit scores, while almost all states mandate that credit-based insurance scores cannot be the sole or primary basis for nonrenewal or rate changes. Many states require insurers to notify applicants or insureds that adverse credit-related decisions have been taken regarding pending applications or existing coverage based on the consumer's credit score. Several states also require insurers to provide reasonable exceptions for extraordinary life events such as illness and divorce. States also have significant authority under their unfair trade practice statutes to address discriminatory practices. These statutes, based on the NAIC *Unfair Trade Practices Model Act*, prohibit insurers from refusing to insure, refusing to continue to insure, or limiting the amount of coverage available to an individual because of race, sex, marital status, religion or national origin.[3]

To help implement these statutory authorities, state insurance regulators have tools designed to identify problematic activity. With the exception of Illinois, all states have rate approval processes either through a "prior approval process" or a "file and use" process.[4] The NAIC Market Regulation Handbook also contains standards for the examination of unfair discrimination in underwriting and rating. Among other review procedures, the Handbook sets forth guidance for the review of relevant underwriting information to ensure that no unfair discrimination is occurring. The regulated entity must have underwriting guidelines that conform to state laws, must follow them consistently and must not treat protected classes of individuals unfairly. Regulators understand that inconsistent handling of rating or underwriting practices, even if not intentional, can result in unfair discrimination. According to NAIC data, from 2007 to 2019, states conducted 391 examinations pertaining to "underwriting discrimination," "rating discrimination," or "use of prohibited rating factors" relating to auto insurance. State regulators found 28 instances where 15 different companies were non-compliant and took action accordingly.[5]

State regulators also recently enhanced their toolkit specifically as it relates to auto insurance by collecting ZIP Code level data from statistical agents. All states now have access to the data in a tool that takes the 12 million-plus records and makes them easier to analyze. Regulators can select a region, city, or ZIP Code and look at coverage type and see the average premium, frequency, and severity of losses in that area. They can also pull in a demographic area and look at metrics like

[2] Section 4.A of NAIC *Property and Casualty Model Rating Law* (Prior Approval Version) and Section 5.A of NAIC *Property and Casualty Model Rating Law* (File and Use Version).
[3] Section 4.G(5) of the NAIC *Unfair Trade Practices Model Act*.
[4] Some states have a "use and file" framework. The "file and use" and "use and file" are similar in terms of regulatory oversight. Illinois is the only state that does not have a rate approval process.
[5] This is based on data voluntarily submitted by member jurisdictions to the NAIC. States maintain their own data relating to examinations, rate filing reviews, and specific enforcement actions.

average income in that ZIP, etc. If states see anomalies or reason for concern including potential instances of unfair discrimination, they can follow up and look at individual company data.

The NAIC is also completing a public report that will show maps at a ZIP Code level in every state for the same metrics. The report will show income quantiles in order to exhibit average premiums, frequency, and severity for each. This will provide additional data to regulators at a more granular level in order to understand low-income populations so they may better evaluate risk assessment by insurers.

Regulatory Oversight of Technological Development in Underwriting

While insurance regulators currently have broad authorities to address unfair treatment of consumers, we also acknowledge that insurance rating and underwriting have become increasingly more complex with the advent of complex algorithms and emerging use of artificial intelligence. Technological advancements have the propensity to more accurately price insurance products for individuals with varying risks, which can reduce costs and benefit consumers, but which can also introduce new privacy and data integrity concerns. For example, telematics allows insurers to collect real-time driver behavior data and combine it with premium and loss data to provide premium discounts. While technological developments have the potential to improve how an insurer does business and can benefit policyholders, state insurance regulators also recognize the complexity of these processes and the need to ensure they comply with state insurance laws and regulations designed to protect consumers from illegal practices. To that end, state insurance regulators, through the NAIC, have been exploring insurers' use of big data for claims, marketing, underwriting, and pricing to encourage innovation while maintaining appropriate consumer protections.

One of the current work streams is exploring options for helping regulators evaluate complex models used in support of auto and homeowner insurance rate filings. State insurance regulators are also developing a white paper on best practices to serve as a guide for their review of predictive models underlying rating plans. These best practices will be incorporated into the NAIC Product Filing Review Handbook and are designed to break down the review of complex predictive models into various considerations for further inquiry. This will provide a helpful resource for determining whether modeled rates are appropriately justified and do not reflect any unfair discrimination. The goal is to adopt the white paper this summer.

State insurance regulators are also beginning to use a new shared database to communicate about insurers' rating models and identify any areas of concerns. There have also been monthly conference calls for regulators about rate filing issues and opportunities for predictive modeling education and training.

Conclusion

State insurance regulators remain vigilant in their oversight of auto insurance underwriting and rating and the potential for discriminatory impacts on certain classes of policyholders. We enforce our state insurance laws to prohibit unfair trade practices and ensure rates are not unfairly discriminatory. The NAIC does not believe federal legislation is necessary as states are mindful of any discriminatory practices that may affect certain minority and low-income groups in their insurance markets and respond by taking remedial action through regulatory or legislative changes to address consumer protection concerns. State regulators are closer to the consumer, and state legislatures have proven they can act quickly when changes are warranted. Federal preemptive legislation would undermine the ability of state regulators to protect consumers in their respective states and tie our hands to respond to future market changes.

In conclusion, state insurance regulators appreciate the subcommittee's attention to examining discrimination in auto insurance. Preventing unfair behavior is central to regulators' core mission of consumer protection and we remain committed to continuing to address this important issue through our supervision of the insurance sector. I would also encourage every member of the subcommittee to reach out to your state's insurance commissioner for a first-hand account of these issues in your respective states – our consumers are your constituents. Thank you for the opportunity to testify today and I would be pleased to take your questions.

Consumer Federation of America

Testimony of Douglas Heller
Insurance Expert, Consumer Federation of America
March 4, 2020
Before the Subcommittee on Housing, Community Development and Insurance
House Financial Services Committee
"Drivers of Discrimination: An Examination of Unfair Premiums, Practices, and Policies in the Auto Insurance Industry"

Chairman Clay, Ranking Member Stivers and Members of the Subcommittee, thank you for the opportunity to present testimony before you today. I am Douglas Heller, Insurance Expert for Consumer Federation of America (CFA). CFA is an association of more than 250 national, state, and local non-profit consumer organizations that was founded in 1968 to advance the consumer interest through advocacy, research and education. I have worked in the area of insurance public policy for more than two decades. In addition to serving as CFA's insurance expert, I am also an appointee to the Federal Advisory Committee on Insurance, and I am an appointee to the California Automobile Assigned Risk Plan, which oversees that state's auto insurance markets of last resort.

Auto insurance is unique. As the only product that most Americans are required to purchase by law, auto insurance and the companies that sell it must be monitored closely and overseen wisely. Because of this government mandate, CFA believes it is particularly important that government also ensures that the product is available, affordable, and priced fairly in the marketplace. However, in many states across the country, the market for auto insurance is not fair for low- and moderate-income Americans and drivers in communities of color, even if they have an unblemished driving history.[1] In this testimony, I share findings from research that CFA has conducted over the past decade regarding pricing in the nation's auto insurance markets and our recommendations for addressing the problem of unaffordability and unfairness confronting millions of drivers throughout the country.

[1] Despite industry's oft-made argument that marketplace competition addresses these concerns, the problems are persistent, and a variety of countervailing forces render the promise of insurance competition unfulfilled and insufficient, most dramatically for lower-income Americans. Among those forces are the McCarran-Ferguson preemption of federal antitrust laws; the unequal relationship between demand and supply, with consumers required to buy coverage (mandated demand) while insurers (supply) can refuse to sell; limited company efforts in poor communities; and a business model that subsidizes customers who combine their policy with other affiliated products (such as home and life insurance) meaning the selective "competition" for wealthier drivers actually harms those without the means to buy additional products.

The Federal Insurance Office reported, in 2017, that approximately 18.6 million Americans live in ZIP codes in which auto insurance is deemed unaffordable.[2] But that is only part of the story. That report considered the average annual written liability premium for the 28 percent of American ZIP Codes that FIO deemed to be "traditionally underserved communities." First, millions of lower-income Americans live in the 72 percent of ZIP Codes not evaluated in this report. Also, whether living in underserved communities or not, most low-income drivers are not offered the "average written premium;" instead, they face significantly higher-than-average premiums, because of the unjust pricing methodologies employed by many insurance companies. The resulting rates can be so high, in fact, that large percentages of some communities simply cannot afford insurance, and it is likely that in many of the nation's most financially stressed communities, the percentage of uninsured drivers on the roads substantially exceeds the national uninsured motorist estimate of about 13 percent of drivers.[3]

For the vast majority of uninsured drivers – who are not scofflaws, they are poor – the only alternative to driving without coverage is not driving at all. This is not a viable option for people who have to get to work, take children to school, and get to appointments on time. Research is unequivocal that for most people in most American communities, having reliable access to a vehicle is essential to economic security and mobility.[4] For many people, driving without insurance and risking the penalties and liabilities associated with that is the only economically realistic option. A recent report by the Uninsured Motorist Division of the Maryland Automobile Insurance Fund summarizes the problem.

> On the issue of affordability, the study shows that the uninsured driving population correlates to, essentially, the working poor. Much of the rate of uninsured driving reflects the rational economic decision to devalue the acquisition of, and continuation of, insurance compared to greater economic needs. Shelter and food will always be more important than auto insurance. Further, the report notes the ramifications of losing shelter and food far outpace the risks attendant to the lack of motor vehicle insurance.

While there are several drivers of auto insurance rates – including vehicle safety, distracted driving, and changes in annual mileage due to the economy, for example – that push premiums higher or lower *on average*, there are certain discriminatory and pervasive pricing practices that consign lower-income drivers to consistently higher-than-average premiums. These practices

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[2] Federal Insurance Office, 2017. Study on the Affordability of Personal Automobile Insurance. https://www.treasury.gov/initiatives/fio/reports-and-notices/Documents/FINAL%20Auto%20Affordability%20Study_web.pdf

[3] Insurance Information Institute. Facts + Statistics: Uninsured motorists. https://www.iii.org/fact-statistic/facts-statistics-uninsured-motorists

[4] See, for example, Pendall, R., Hayes, C., George, A. T., McDade, Z., Dawkins, C., Jeon, J. S., ... & Smart, M. (2014). Driving to opportunity: Understanding the links among transportation access, residential outcomes, and economic opportunity for housing voucher recipients.; Baum, C. L. (2009). The effects of vehicle ownership on employment. *Journal of Urban Economics*, *66*(3), 151-163; Waller (2005); Lucas, M. T., & Nicholson, C. F. (2003). Subsidized vehicle acquisition and earned income in the transition from welfare to work. Transportation, 30(4), 483-501; and Taylor, B. D., & Ong, P. M. (1995). Spatial mismatch or automobile mismatch? An examination of race, residence and commuting in US metropolitan areas. *Urban studies*, *32*(9), 1453-1473.

unfairly force even the safest drivers to pay premiums they should not be charged and, often, cannot afford. It is this set of "drivers of discrimination" that the subcommittee is investigating, that H.R. 3693 (The Prohibit Auto Insurance Discrimination Act) introduced by Representatives Watson-Coleman and Tlaib seeks to address, and that I address below.

This auto insurance discrimination and unfairness emanates, in considerable part, from auto insurance companies' use of socio-economic and personal financial status when setting drivers' premiums. That is, companies often give weight to non-driving factors that have nothing to do with how well people drive, how many miles they drive, how much experience they have behind the wheel, or how safe their car is. Although states forbid the use of income *per se* as a rating factor, most states do nothing to block the use of factors, as I will describe below, that are clearly surrogates for income. Additionally, the legacy of geographic redlining continues to impact drivers in many communities around the country, and I will touch on that as well.

First, I'd like to share an example of the socio-economic discrimination we have found through marketplace testing that CFA has conducted.

This research reveals, in practical terms and dollar figures, the way that current law and regulatory practice has allowed insurance companies in many states to overcharge lower- and moderate-income good drivers. These are the folks shouldering the heaviest burden when it comes to the challenge of complying with the state insurance mandates, and they are the most likely to fall into the ranks of the uninsured or suffer the economic consequences of not being able to drive.

The following data come from testing CFA conducted in February 2020 that reviewed online auto insurance premium quotes from one of the nation's largest auto insurance companies. The prices from these tests reflect the premium that this insurer quoted for a six-month auto policy that provides the bare minimum required coverage for a driver living in Baton Rouge, Louisiana. The pricing disparities described, however, repeat itself in most states, with a few exceptions discussed below, and should be understood as generally reflective of the experience faced by consumers around the country.

Each of the premium quotes provided here are for a 35-year old driver with a perfect driving record – never caused an accident, got a ticket, or filed a claim.

The first premium quote was for a man who is an investment banker with an MBA degree, who owns his home, and has been insured with the same company for the past three years. The insurance company quoted him a premium of **$718 for a six-month policy**.

I then tested the same driver save for one difference. Instead of quoting a male driver, I asked for a quote for a female driver. She is still an investment banker with an MBA, lives at the same address as the prior test subject and owns the home, drives the same car and has the same pristine driving record. The company quotes her a 6-month premium for the basic minimum liability policy of **$813. That's 13% more for being a woman.**

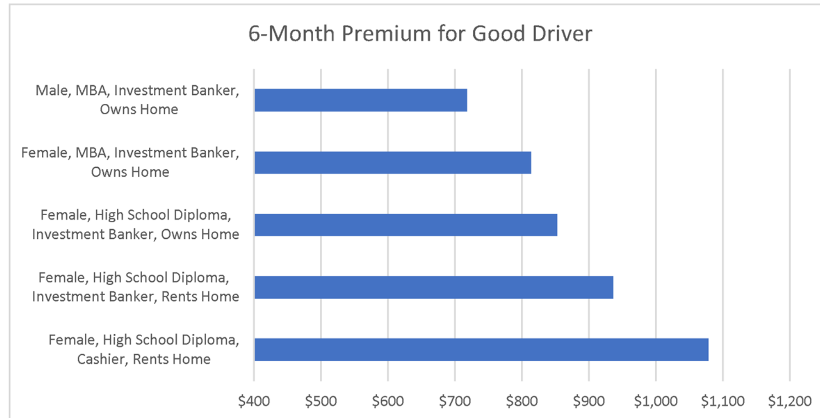
If instead of having a Master Degree, she only has a high school diploma, her premium quote jumps **5% to $852 because of her level of education.**

In the next test, I changed her homeownership status to renter. She is living in the same house, in the same ZIP Code, but she does not own it. Her premium jumps **$84 to $936 for the 6-month policy, or $168 more per year**. It should be noted that these premiums assume that the driver *does not* combine home and auto insurance, which would add create an even wider disparity between the premiums.

When, in the next test, I indicate that she is not an investment banker but, a supermarket cashier at a supermarket, her premium goes up again. Because she wears a blue collar rather than a white collar, the cost of basic auto insurance goes up by 15 percent. She is now quoted **$1,079 for the same coverage that the highly educated male investment banker got for $717**, even though they both have been accident and ticket free for all 20 years they have been driving. The full comparison is illustrated in the graph below.

Through this occupation-based rating approach, which is not imposed by all companies, several of the nation's largest insurers have found a proxy by which they price people according to their income. CFA's research has found that

Retail Cashiers face higher premiums than *Investment Bankers;*
Janitors face higher premiums than *Attorneys;*
Bank Tellers face higher premiums than *Bank Managers;*
Firefighters face higher premiums than *Corporate Executives;*
Day Care Workers face higher premiums than *Architects;*
Ranch Hands face higher premiums than *Actuaries;*
Licensed Vocational Nurses face higher premiums than *Surgeons;* and
Factory Workers face higher premiums than *Plant Managers.*



On an annual basis, the working-class woman from Baton Rouge with an unblemished driving record must come up with $722 more for her mandatory auto insurance policy than the socio-economically advantaged man is charged.

This premium punishment is accrued before incorporating the impact of two of the most significant non-driving factors that insurance companies use to raise rates on impoverished good drivers. These two factors – credit history and current insurance status – often account for hundreds and even thousands of dollars in surcharges that many poor people are expected to pay in order to comply with state insurance laws.

In every state but California, Hawaii, and Massachusetts (where credit-based rating is prohibited), auto insurers use credit-based scores to determine drivers' premiums, even when their actual loss history is pristine. Most people do not realize that a low or moderate credit history can substantially raise their premiums. But, as *Consumer Reports* illustrated vividly in its 2015 report on the subject,[5] having a merely "good" but not "excellent" credit score can cost hundreds of dollars per year.

In Missouri, the magazine reported, a motorist with no points on their driving record and a "good" credit score paid $222 more on average for an insurance policy than the same driver with "excellent" credit. In New York, the good credit score came with an average $255 annual penalty, and it was $293 in Texas. But, of course, the premium pain is even more devastating for safe drivers with "poor" credit score. For example, in Ohio the poor credit score pushed rates up by an average of $814 above the premium charged to excellent credit drivers. It went up by $995 in Tennessee, and in Washington State, poor credit led to $1,536 in additional annual premium. In

[5] *Consumer Reports*, July 30,2015. The Secret Score Behind Your Rates. https://www.consumerreports.org/cro/car-insurance/credit-scores-affect-auto-insurance-rates/index.htm

Michigan, where average annual premiums for a good driver with excellent credit were an already high $2,371, the good driver with poor credit saw the average premium increase by a staggering 141 percent to $5,725 annually. That is a $279 per month penalty due to their credit history.

Nothing highlights the insidiousness of these socio-economic and personal rating factors quite like one key finding by *Consumer Reports.* In most states the premium impact of having poor credit is greater than the impact of a drunk driving conviction. The average premium, for example, for a driver with a DUI and excellent credit in Iowa was reported to be $1,489, while a good driver with poor credit was charged $1,837, or $348 more than the drunk driver. In Wisconsin having poor credit cost 53 percent more, or $596 per year, than having a DUI. In Colorado, a safe driver with poor credit paid $1,141 more than the DUI driver with excellent credit. In Florida, as illustrated below, a safe driver with a poor credit score paid $1,552, or 68 percent more than the convicted drunk driver.

FLORIDA

Insurance Costs by Credit Score

Rates shown are the average new-customer premium for adult single drivers with a clean driving record and poor, good, or excellent credit. We compare these to the average premium for a driver with excellent credit and a driving while intoxicated (DWI) conviction.

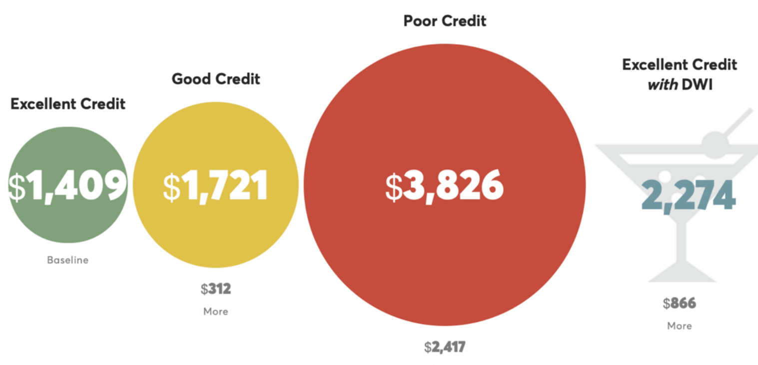


Image source: https://www.consumerreports.org/cro/car-insurance/credit-scores-affect-auto-insurance-rates/index.htm

It is very important to note that the auto insurance markets in states that have prohibited the use of credit in underwriting and rating have not suffered as a result of this prohibition. In fact, using the Department of Justice market concentration metric – the Herfindahl-Hirschman Index (HHI) – California, with its ban on credit scoring as well as several other socioeconomic rating factors, maintains the second most competitive auto insurance market in the nation. In two of the three states, Hawaii and California, both the average expenditure on auto insurance and the average liability premium in the states are below the national average. Indeed, over several decades of study, these two states have had the lowest increase in auto premiums in the nation.[6] Barring the use of credit scores has not led to price hikes for consumers, companies fleeing the state, or other negative consequences. Instead, when told to price drivers without relying on credit scores, insurers have simply adapted to the rules.

Another driver of the insurance discrimination faced by lower-income drivers is the steep surcharge many companies impose on customers who have had a break in insurance coverage. This break could mark a period in which the customer was driving uninsured, because they could not keep up with the cost of coverage. It could be because they did not have a working vehicle and did not need insurance, and it could even be that they did not carry coverage while they were deployed overseas in service of the country. CFA research has found that each of these variants can lead to significant price hikes, often hundreds and sometimes thousands of dollars per year.

Returning to the example of the good driver in Baton Rouge described above, we sought a quote for her except that rather than noting that she had been continuously insured for the past three years, I asked for a quote assuming that she is currently not insured because she has not needed coverage. Her premium – which had been $1,079 for six months as a woman with a high school diploma, job as a cashier, and a home that she rents – jumped 41 percent to $1,523. Even, when we selected the company's option to explain the break in coverage as the result of deployment, an option explicitly provided on the website, she was charged a $30 penalty. When we tested a male soldier who was currently uninsured due to his deployment, the increase on $213 on a six-month policy. Other research CFA has reviewed found this Patriot Penalty for drivers in at least 21 states.[7]

Returning to the non-deployed driver who was temporarily without insurance for other reasons, the steep premium hike for a lapse of coverage becomes a major hurdle to compliance. When drivers, who are well aware of the serious consequences of driving uninsured – including hefty fines, vehicle impoundment, and jail time in several states[8] – attempt to meet their state's financial responsibility law, they are told that the cost of re-entry is hundreds of dollars more than they would have paid if their coverage had not lapsed. But the reason the insurance lapsed in the

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[6] Hunter, J. and Heller, D., 2019. Auto Insurance Regulation What Works 2019. Consumer Federation of America https://consumerfed.org/wp-content/uploads/2019/02/auto-insurance-regulation-what-works-2019.pdf.

[7] A news report that details this Patriot Penalty by investigative reporter Lee Zurik, is available at https://www.investigatetv.com/patriot-penalty/.

[8] Brobeck, S., Best, M. & Feltner, T. (March 2013). Uninsured Drivers: A Societal Dilemma in Need of a Solution. Consumer Federation of America. https://consumerfed.org/pdfs/140310_uninsureddriversasocialdilemma_cfa.pdf

first place is often because they could not afford it. Requiring them to pay after this break in coverage often reinforces their relegation to uninsured status.

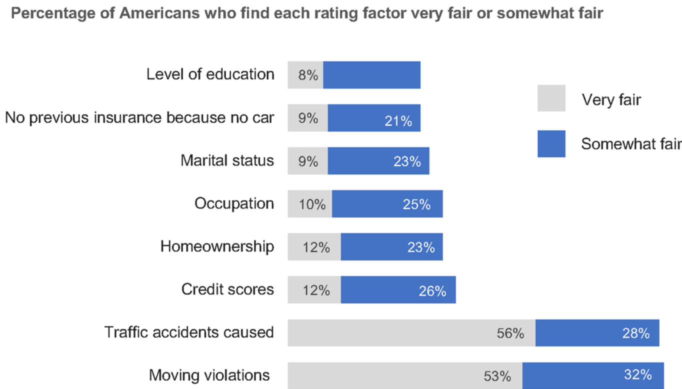
Consumer Federation of America has surveyed Americans and found that, despite the fact that regulators in most states allow insurance companies to use these socio-economic and personal financial factors for rating, most Americans do not consider these practices fair.

In June 2016, CFA commissioned ORC International to conduct a representative survey of 1,000 Americans to ascertain the public's view of the use of various rating factors in the setting of auto insurance premiums. The survey found that 83 percent of the public found it very fair or somewhat fair for auto insurers to use traffic accidents caused in setting premiums and 84 percent found it very or somewhat fair to use moving violations such as speeding tickets. The near opposite was true for the non-driving related factors that reflect drivers' economic status, as shown in the figure below.

Respondents were asked the following question for each of the eight rating factors tested:

> *As you probably know, auto insurers use many factors to decide how much each driver is charged for their insurance coverage. How fair do you think it is for insurers to use each of the following factors in deciding on an auto insurance price for a driver? Would you say each is very fair, somewhat fair, somewhat unfair or very unfair?*

For the survey, the order in which the different factors were presented was randomized.



Source: ORC International Survey conducted June 9-12, 2016, all figures are rounded

In other words, Americans get it. They believe they should be held to account for the accidents they cause and the risk they demonstrate on the road. But their socio-economic status should not make their premiums higher or lower, when they are ordered to buy auto insurance under the law.

However, in study after study, CFA has found that there are many ways even beyond what I am reporting today in which non-driving characteristics weigh heavily on lower-income Americans who are trying to comply with their states' auto insurance requirements. A listing and brief summary of each these reports are attached as Exhibit 1.[9]

In short, we have found that good drivers pay more for the same policy if they are

- Women rather than men;
- Single, divorced, or widowed rather than married;
- Less educated rather than highly educated;
- Blue collar workers rather than white collar workers;
- Renters rather than homeowners;
- Switching from a non-standard insurance company rather than a name brand company;
- Previously purchased minimum limits coverage rather than more expansive coverage;
- Previously uninsured rather than continuously covered; and
- Folks with less than excellent credit.

Each of these factors push rates up unnecessarily and make the cost of auto insurance a more severe burden for lower-income drivers. What makes it worse is that for many low-income drivers, they face the accumulated pain of many or all of these factors being imposed on them, because, low-income people are often blue collar *and* renters *and* less educated *and* single *and* dealing with credit problems. Taken alone, each factor is unfair, taken together they are the source of high levels of overcharged consumers and uninsured driving in communities around the country. According to CFA's actuary, it is impossible that these factors are actuarially supported or actuarially sound, particularly when considering the cumulative impact of the factors.

The actuarial weakness of these pricing practices, and the obvious conflict with a public policy interest in fairness, leads to the question of why insurers fight so aggressively to preserve the use of these non-driving rating factors, when they do so much harm to low- and moderate-income drivers who must purchase this coverage.

The answer lies with the way many companies evaluate different customers. For some insurers, the most preferred customers are those who will buy the most product for the longest time. They are hunting for customers who will not just purchase a minimum limits auto insurance policy, but who will buy more-than-minimum coverage as well as home insurance and life insurance and an umbrella policy and may consider signing up for other financial services offered by the insurer or its affiliates. Each of the socio-economic and personal financial factors used are proxies for income

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[9] The series of CFA reports is also available at http://consumerfed.org/cfa-studies-on-the-plight-of-low-and-moderate-income-good-drivers-in-affording-state-required-auto-insurance./

generally, and, more specifically, the potential lifetime customer value of drivers shopping for auto insurance. Having a high paying job, owning a home, and maintaining a high credit score are all indicators of someone who could buy more product, so insurers aim to keep auto insurance rates – for which everyone must shop – enticing to these profitable prospects. But a low-wage worker with a high school diploma, a lapse in coverage, and a poor credit score, is not attractive as a lifetime prospect for the insurer and, therefore, gets stuck with the highest rates. Irrespective of how insurers divide up their customer base, companies still need to earn enough premium to cover the losses from their book of business. If they use pricing to attract higher net worth customers with lower rates, then they need to find other customers to pick up the slack with higher rates, and that too often falls on the shoulders of lower-income Americans who, regardless of the financial condition, still must purchase an auto insurance policy.

In addition to these socio-economic factors, another pricing practice of insurers also results in a disparate impact. CFA research into pricing discrimination in the auto insurance marketplace has also found that the legacy of geographic redlining – in which some communities would not be served by financial institutions – remains through pricing that often leaves good drivers in communities of color paying much higher rates than peers in whiter and wealthier communities, sometimes as nearby as across the street.

In a 2015 review of more than 200,000 auto insurance quotes in nearly all U.S. ZIP Codes, CFA found systematic pricing disparities for drivers in predominantly African American communities. We found:

- In communities where more than three quarters of the residents are African American, premiums average 70 percent higher than in those with populations that are less than one quarter African American ($1,060 vs. $622);
- In the densest urban communities, the average premium in predominantly African American ZIP codes is 60 percent higher than the average premium in equally dense predominantly white urban ZIP codes ($1,797 vs. $1,126);
- In rural ZIP codes, the average premium in predominantly African American ZIP codes is 23 percent more than the average premium in rural, predominantly white ZIP codes ($669 vs. $542);
- The average premium in upper middle-income, predominantly African American ZIP codes is 194 percent higher than the average premium charged to a similarly situated driver in an upper middle-income, predominantly white ZIP code ($2,113 vs. $717); and
- In several metropolitan regions around the country, including the Baltimore, New York, Louisville, Washington, DC, Detroit, Boston, and Orlando metropolitan regions, the disparity of premiums is more than 50 percent between predominantly African American and predominantly white ZIP codes.

In 2018 research, CFA found significant premium differences in 10 major cities among neighbors living within 100 yards of each other but in adjacent ZIP codes, sometimes as close as across the street or even next door. In each city tested, the higher-priced ZIP code had a lower median income and a higher percentage of non-white residents than the neighboring, lower-premium ZIP code.

As an example of the research findings, a good driver in the lower-income, predominantly African American Buffalo, New York 14215 ZIP code was quoted 34% higher premiums on average than her counterpart next door, in the wealthier, majority white 14226 ZIP. While actuaries might argue about how much of a risk difference exists when cars are primarily driven in a densely packed city compared with a sparsely populated rural town, we believe there is no basis for charging 20, 30, or sometimes 50 percent more to drivers who live across the street from each other. When companies use rating plans that create stark pricing differences for adjacent ZIP codes, we would hope that regulators would step in and block those plans, because they make no sense and are unfair.

Unfortunately, in too many states around the country, there is no meaningful regulatory protection against this geographic unfairness or the range of discriminatory rating practices described above. There are, however, some notable exceptions. While the following is not comprehensive, we believe that it represents most of the consumer rating protections around the country:

- Three states (California, Hawaii, and Massachusetts) prohibit credit score;
- Seven states (California, Hawaii, Massachusetts, Michigan, Montana, North Carolina, and Pennsylvania) prohibit use of gender;
- Four states (New York, California, Massachusetts, and Michigan, according to recent statutory changes) prohibit or virtually prohibit use of education and occupation as rating factors, though a California loophole that insurers have carved out in this regard is subject to a current regulatory proceeding there;
- One state (Montana) bans use of marital status, and another (Maryland) bans penalties for widows;
- Three states (California, Massachusetts and Minnesota) prohibit use of homeownership status; and
- One state (California) bans use of prior insurer, prior limits and uninsured status.

These protections are the exceptions, and drivers need more assurance that the insurance they are required to purchase is priced fairly. Consumer Federation of America believes that state lawmakers and regulators must do a better job of protecting consumers, especially those safe and responsible drivers who are vulnerable to high process not because of their riskiness, but because of their socio-economic status.

The federal government also has an important role to play by investigating the affordability of auto insurance and identifying discrimination and disparate impacts in the marketplace. Further, as part of its requirement that states regulate insurance in order for the federal government to relinquish oversight of the industry to the states, we believe that Congress could set a floor for regulatory standards that includes a clear prohibition on the many drivers of discrimination described in this testimony.

Thank you for your consideration of our views and concerns.

Exhibit 1

Consumer Federation of America

CFA Studies on the Plight of Low- and Moderate-Income Good Drivers in Affording State-Required Auto Insurance

Over the past several years, Consumer Federation of America (CFA) has undertaken an effort to research the state of the auto insurance market in America with a particular focus on issues of access and affordability for lower- and middle-income Americans. This research project has included studies using a variety of data sources, including NAIC and ISO reports, company-specific rates by ZIP-code from a third-party vendor, and systematic rate testing of individual insurance company websites.

As discussed below, the research addresses several different aspects of auto insurance rates, premiums and the market, but all point to a few key findings:

- The cost of state-mandated basic liability insurance is higher than many lower-income Americans can afford and the number of uninsured citizens in this category is higher than the national average as a result;
- Insurers use a variety of socio-economic rating factors that push premiums up for lower-income Americans despite good driving records; and
- Stronger state consumer protections related to auto insurance rate setting leads to greater access to and more stability in auto insurance markets.

Below is a short description of each of the reports that CFA has issued since 2012. This is followed by a summary of the key recommendations from the reports.

Low-Income Drivers Looking To Increase Auto Insurance Coverage Pay A Penalty Compared With Customers Who Already Had Higher Coverage
Consumer Federation of America (2019)

Auto insurance companies Allstate, Farmers, Geico, Liberty Mutual, Progressive, and State Farm, usually charge an average of $254 more annually for auto insurance to shoppers who currently have a minimum limits liability policy than companies charge to those who have previously purchased higher limits insurance. CFA reviewed premium quotes from the six companies in several cities around the country and found the practice to be unjust and actuarially unsound penalty on the poor.

Higher rates were not the only punishment imposed on lower-income drivers. In one instance, an insurance company did not provide a quote for the shopper with basic limits even though it offered a quote to the shopper who had more robust coverage. In another instance, it shifted the lower limits customer to its non-standard market affiliate.

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Auto Insurance Regulation – What Works 2019

Consumer Federation of America (2019)

Updating decades of research, the Consumer Federation of America reveals what data shows about the many different approaches to auto insurance market oversight and consumer protection in the United States and how some states have saved drivers billions, while others have allowed significantly increased costs for drivers.

Auto Insurers Often Charge Identical Neighbors Considerably Higher Premiums Because of ZIP Code Differences

Consumer Federation of America (2018)

Many good drivers in ten American cities tested by Consumer Federation of America (CFA) are paying far too much for auto insurance simply because of their home ZIP code, the organization reported today. CFA's research points to significant premium differences in each region among neighbors living within 100 yards of each other in adjacent ZIP codes, sometimes as close as across the street or even next door. In each city tested, the higher-priced ZIP code had a lower median income and a higher percentage of non-white residents than the neighboring, lower-premium ZIP code.

Some Major Auto Insurers Provide No Discount to Low-Mileage Drivers

Consumer Federation of America (2018)

In 11 cities tested outside of California, the nation's largest auto insurers generally offered little or no premium reduction to low-mileage drivers compared with high-mileage drivers, even though insurance research indicates that how much you drive is among the most important factors in predicting accidents. According to the research, Progressive and Farmers usually charge the same rates to someone who drives only 2,500 miles a year as they charge someone else who drives 22,500 miles a year – nine times as far – all else being equal. CFA noted that, in setting customers' premiums, insurance companies often give more weight to personal characteristics such as marital status and credit score than to key risk indicators such as mileage driven annually.

After reviewing 275 quotes for basic liability coverage from five large insurers, CFA found:

- Consumers save only $30 per year, or 1.6%, on average for every 5,000 fewer miles driven annually, excluding California drivers, who save $81 on average, or 8.7%.
- Outside of California, premiums for very low-mileage drivers (2,500 miles/year) are only $102 lower*, on average, than very high-mileage drivers (22,500 miles/year), a savings of about 6% annually. (*Excludes Allstate in Tampa, where minimum coverage quote was not provided.)
- In Los Angeles, very low-mileage drivers save $346, or 30%, compared to very high-mileage drivers.
- Outside of California, Farmers and Progressive provide no mileage-based savings in tested cities, Geico offers a small price reduction, while Allstate's and State Farm's

lowest-mileage customers saw average savings of 11% and 13%, respectively, compared with the highest-mileage drivers.

Most Large Auto Insurers Charge 40 and 60-Year-Old Women Higher Rates Than Men, Often More Than $100 Per Year

Consumer Federation of America (2017)

Female motorists with perfect driving records often pay significantly more for auto insurance than male drivers with identical driving records and other characteristics the insurers use to price auto insurance. This finding contrasts with the public perception that men pay more than or the same as women for auto insurance. According to a national public opinion survey, less than a quarter of Americans correctly think that women pay more.

In ten cities studied, CFA found that 40- and 60-year old women with perfect driving records were charged more than men for basic coverage nearly twice as often as men were charged the higher rate. Premiums were lower for 20-year old women than for 20-year old men most of the time; however, GEICO charged young female drivers more than young male drivers in nine of ten cities. These price differences are particularly important, according to CFA, because every state except New Hampshire requires drivers to purchase basic liability insurance coverage.

3 Major Auto Insurers Usually Charge Higher Prices to Good Drivers Previously Insured by Non-Standard Insurers

Consumer Federation of America (2017)

Auto insurance giants Allstate, Farmers, and American Family often charge nine to fifteen percent higher premiums to good drivers previously insured by smaller, “non-standard” insurers than those who had coverage from State Farm or other primary competitors.

Allstate charged 15 percent ($235) more on average to good drivers previously covered by non-standard auto insurers such as Safe Auto Insurance and Equity Insurance Co. than if they had been previously insured by State Farm. Farmers charged nine percent ($260) more on average to customers coming from non-standard companies, including Titan Insurance and Access Insurance Company, than those hailing from State Farm policies. American Family Insurance, the nation’s ninth largest auto insurer, charged nine percent ($166) more on average to customers previously with non-standard carriers, such as Direct General and Safeway Insurance.

Major Insurance Companies Raise Premiums After Not-At-Fault Accidents

Consumer Federation of America (2017)

Safe drivers who are in accidents caused by others often see auto insurance rate hikes. The research analyzed premium quotes in 10 cities from five of the nation’s largest auto insurers. Among the cities tested, drivers in New York City and Baltimore pay out the most for an accident where the driver did nothing wrong, and customers in Chicago and Kansas City also face average increases of 10 percent or more when another driver crashes into them.

CFA's research over recent years has consistently found that good drivers with certain socio-economic characteristics that suggest lower incomes generally pay more for auto insurance than higher-income drivers with the same driving record. This pattern holds when it comes to penalizing drivers for accidents in which they were not at fault. Higher-income drivers paid $78 more on average after a not-at-fault accident, while moderate-income drivers paid $208 more on average after a not-at-fault accident.

Major Insurers Charge Moderate-Income Customers With Perfect Driving Records More Than High-Income Customers With Recent Accidents

Consumer Federation of America (2016)

Auto insurance prices are often more closely aligned with personal economic characteristics than with drivers' accident and ticket history. Testing premiums offered by the nation's five largest insurers in ten U.S. cities for drivers with different socio-economic characteristics and different driving records, CFA found surprising results, including: upper-income drivers with DUIs often pay less than good drivers of modest means with no accidents or tickets on their driving record; moderate-income drivers with perfect records pay more than upper-income drivers who caused an accident in which someone was injured; progressive and GEICO consistently charge upper-income bad drivers less than moderate-income good drivers; moderate-income good drivers often pay more than upper-income drivers with multiple points on their record.

Major Auto Insurers Raise Rates Based on Economic Factors

Consumer Federation of America (2016)

In most states auto insurance premiums are driven in large measure by economic factors that are unrelated to driving safety, a practice that most Americans consider unfair. Among the most common of the individual economic and socio-economic characteristics used by auto insurers are motorists' level of education, occupation, homeownership status, prior purchase of insurance, and marital status. Because each of these factors are associated with an individual's economic status and because insurers consistently use each factor to push premiums up for drivers of lesser economic means, the combined effect of insurers' use of these factors can result in considerably higher prices for low- and moderate-income Americans, leaving many overburdened by unfairly high premiums and others unable to afford insurance at all.

Good Drivers Pay More for Basic Auto Insurance If They Rent Rather Than Own Their Home

Consumer Federation of America (2016)

Several major auto insurance carriers hike rates on good drivers who rent their home rather than own it. CFA tested the premiums charged by seven large insurers to a good driver in ten cities. For each test we only changed the driver's homeownership status and found that renters were charged seven percent more on average – $112 per year – for a minimum limits policy than insurers charged drivers who own their homes, everything else being equal.

Price of Mandatory Auto Insurance in Predominantly African-American Communities
Consumer Federation of America (2015)

CFA released research comparing auto insurance prices in predominantly African-American Communities with prices paid in predominantly white communities. Nationwide, in communities where more than three quarters of the residents are African American, premiums average 71 percent higher than in those with populations that are less than one quarter African American after adjusting for density and income. In Baltimore, New York, DC, Detroit, Boston and other cities, the disparity of premiums is more than 50 percent between predominantly African American and predominantly white ZIP codes.

New Research Shows That Most Major Auto Insurers Vary Prices Considerably Depending on Marital Status
Consumer Federation of America (2015)

CFA released research on how insurers utilize marital status in their pricing of auto insurance policies. CFA questions the fairness and relation to risk of this pricing by most major insurers, particularly their practice of hiking rates on women whose husbands die by 20% on average, the "widow penalty."

Auto Insurers Fail to Reward Low Mileage Drivers
Consumer Federation of America (2015)

CFA released research showing that large auto insurers frequently fail to reward drivers with low mileage despite a strong relationship between this mileage and insurance claims. The study found that three of the five largest insurers often give low-mileage drivers no break at all. In a 2012 nationwide survey conducted by ORC International for CFA, 61 percent of respondents said that it was fair for auto insurers to use mileage in pricing auto insurance.

Large Auto Insurers Charge High Prices, to a Typical Lower-Income Safe Driver with Car Financing, for Minimal Coverage
Consumer Federation of America (2014)

CFA found that annual auto insurance premiums are especially high for the estimated eight million low- and moderate-income drivers who finance their car purchases. These drivers must purchase the comprehensive and collision coverage required by auto lenders in addition to the liability coverage required by states. In the 15 cities CFA surveyed, annual premium quotes were almost always more than $900 and were usually more than $1,500.

In a related national opinion survey undertaken by ORC International for CFA, nearly four-fifths of respondents (79%) said that a fair annual cost for this auto insurance coverage was less than $750. One-half (50%) said that a fair annual cost was less than $500. Respondents were asked what they thought was a reasonable annual cost for a "30-year old woman with a modest income and ten years driving experience with no accidents or moving violations" for required liability, collision, and comprehensive insurance coverage.

High Price of Mandatory Auto Insurance for Lower Income Households

Consumer Federation of America (2014)

The country's five largest auto insurance companies do not make a basic auto insurance policy available to typical safe drivers for less than $500 per year in over 2,300 urban and suburban ZIP codes including 484, or more than a third, of the nation's lowest-income ZIP codes. In the report, CFA analyzed 81,000 premium quotes for State Farm, Allstate, Farmers, Progressive, GEICO and each of their affiliates in all ZIP codes in 50 large urban regions, which include urban, suburban and adjacent rural communities. CFA also reviewed the premium quotes from an additional 58 insurance companies – comprising a total of 207 insurance affiliates including those of the five largest insurers – which produced similar results.

In 24 of the 50 urban regions, there was *at least one* lower-income ZIP code where annual premiums for a minimum limits policy exceeded $500 from every major insurer. In nine of these 50 areas – Miami/Ft. Lauderdale, Detroit, Minneapolis/St. Paul, Tampa/St. Petersburg, Baltimore, Orlando, Jacksonville, Hartford, and New Orleans – prices exceeded $500 in *all* lower-income ZIP codes.

This report included the finding from a recent national survey that more than three-quarters of Americans (76 percent) believe that a "fair annual cost" for state-mandated insurance for a typical good driver with no accidents and no tickets should be less than $500.

Uninsured Drivers: A Societal Dilemma in Need of a Solution

Consumer Federation of America (2014)

This report found that most uninsured drivers in America have low incomes and cannot afford to purchase the mandatory minimum liability coverage required by their state. The report also revealed that these low-income drivers are increasingly adversely impacted by state and local government actions, including raising liability requirements (driving up premiums), more rigorous enforcement, and stiffer penalties. However, there is little difference in uninsured rates between those states that penalize uninsured drivers harshly and those that do not. The report reviewed penalties for driving without auto insurance in every state and found some of these very harsh penalties for lower-income Americans who truly cannot afford the required insurance:

- Fourteen states allow jail sentences for a first offense,.
- Thirty-two states allow for the possibility of license suspension for a first offense.
- Thirty-three states have possible fines of $500 or more for a first offense.

CFA Analysis Shows Auto Insurers Charge Higher Rates to Drivers with Less Education and Lower-Status Jobs

Consumer Federation of America (2013)

Several major auto insurers place a heavy emphasis on their customers' occupation and education when setting prices, forcing lesser educated, blue collar workers with good driving

records to pay substantially higher premiums than drivers with more education and higher paying jobs. For example:

- GEICO charges a good driver in Seattle 45% more if she is a factory worker with a high school degree than if she is a plant superintendent with a bachelor degree;
- Progressive charges the factory worker 33% more in Baltimore; and
- Liberty Mutual charges the worker 13% more in Houston.

The reported also highlighted a national survey that found that about two-thirds of Americans believe that it is unfair to use education and occupation when pricing insurance policies.

What Works: A Review of Auto Insurance Rate Regulation in America and How Best Practices Save Billions of Dollars
Consumer Federation of America (2013)

Over the past quarter century, auto insurance expenditures in America have increased by 43 percent on average and by as much as 108 percent. These increases occurred despite substantial gains in automobile safety and the arrival of several new players in the insurance markets. Only in California, where a 1988 ballot initiative transformed oversight of the industry and curtailed some of its most anti-consumer practices, did insurance prices fall during the period, resulting in more than $4 billion in annual savings for California drivers.

This report used NAIC data to assess the impact of different types of insurance market oversight (prior approval, file and use, use and file, flex rating, and deregulation) on rates, industry profitability, and competition. It also provided a detailed analysis of California's experience with the nation's most consumer protective rules governing the auto insurance market.

Largest Auto Insurers Frequently Charge Higher Premiums To Safe Drivers Than To Those Responsible For Accidents
Consumer Federation of America (2013)

CFA analyzed premium quotes from the five largest auto insurers in twelve major cities and found that two-thirds of the time, insurers would charge a working class driver with a 45 day lapse in coverage and a perfect driving record more than companies charged an executive with no lapse in coverage but a recent at-fault accident on their record. In 60% of the tests, the lower-income good driver was charged at least 25% more than the higher-income driver who had caused an accident.

Use of Credit Scores by Auto Insurers Adversely Impacts Low- and Moderate-Income Drivers
Consumer Federation of America (2013)

Holding all other factors constant, the two largest auto insurers, State Farm and Allstate, charge moderate-income drivers with poor credit scores much higher prices than drivers with excellent scores. Using data purchased from a third party vendor of insurance rate

information, this report showed that State Farm increased rates for the low credit score driver an average of 127 percent over the high credit score customer and Allstate raised rates by 39 percent, costing State Farm and Allstate customers an average of more than $700 and $350, respectively, based solely on credit scores.

The report also pointed to a recent national survey conducted for CFA that found that, by a greater than two to one ratio, Americans reject insurer use of credit scores in their pricing of auto insurance policies.

Auto Insurers Charge High and Variable Rate for Minimum Coverage to Good Drivers from Moderate-Income Areas

Consumer Federation of America (2012)

This report used extensive website testing to show that good drivers — those with no accidents or moving violations — who live in moderate-income areas in 15 cities were being quoted high auto insurance rates by major insurers for the minimum liability coverage required by those states. Over half (56%) of the rate quotes to two typical moderate-income drivers were over $1000, and nearly one-third of the quotes (32%) exceeded $1500.

The report also presents findings from a national survey that shows that lower-income families report knowing people who drive without insurance at a much higher rate than higher-income drivers. Further, nearly 80 percent of drivers agreed that "they [the uninsured drivers] do so because they need a car but can't afford the insurance."

Lower-income Households and the Auto Insurance Marketplace: Challenges and Opportunities

Consumer Federation of America (2012)

Access to an automobile plays a critical role in creating economic opportunities for lower-income Americans and the affordability of auto insurance plays a key role in this access. This report provides an overview of the auto insurance market with a detailed discussion of low- and moderate-income (LMI) households' participation in the auto insurance market. The report summarizes pricing information collected by CFA as well as data related to availability, residual markets and uninsured motorists.

At the heart of this report, which was the first in the series of reports outlined above, is the finding that for millions of lower-income Americans auto insurance is unaffordable and inaccessible despite their unblemished driving records. High priced auto insurance, which often leads LMI drivers to choose between giving up their cars or driving uninsured, creates serious economic hardships, and the issue must be addressed by policymakers and regulators. The report concludes with a summary of the issues, obstacles and needs facing LMI customers and policy suggestions for addressing them.

Written Testimony of

Sonja Larkin-Thorne,

Consumer Advocate & Retired Insurance Executive

Before the

Subcommittee on Housing, Community Development and Insurance

U.S. House Committee on Financial Services

Regarding:

Drivers of Discrimination: An Examination of Unfair Premiums, Practices, and Policies in the Auto Insurance Industry

March 4, 2020

Chairman Clay, Ranking Member Stivers and members of the Subcommittee, thank you for the opportunity to testify this afternoon on pending legislative proposals regarding the use of credit scoring in the underwriting of personal automobile insurance and for allowing me to share my insights and actual experience.

My name is Sonja Larkin-Thorne. I have over 40 years of experience in the insurance industry and I currently chair the Consumer Data Subcommittee of the Connecticut Insurance Department Advisory Council on Technology. My testimony will attempt not to repeat what you may already know or have heard about the use of insurance credit scores in personal auto insurance underwriting or the many studies on this topic over last twenty-plus years. My testimony focuses on the evolution of the underwriting of personal automobile insurance from 'traditional underwriting' to the use of insurance credit scores and now, to the use of new, 'Big' Data. I hope my testimony will also highlight how the collection and analysis of these new data sources reaches every aspect of a policyholder's life, but does so with little or no regulatory oversight – and notably less oversight than applied to credit scores.

I am an insurance underwriter by training. I spent the first ten years of my insurance career working in or managing underwriting departments. When I

began my career, the manual process of collecting and analyzing underwriting data represented a significant expense that necessarily contributed to the cost of policyholder premiums.

More than 40 years ago, insurers began looking to utilize data sources that could reduce underwriting costs while continuing to accurately reflect the likelihood and expense of a policyholder filing an automobile insurance claim. I recall training my underwriting team on how to read a credit report while also reviewing traditional motor vehicle records and the policyholder's paper application for automobile insurance. We had no desk top computers or electronic submission of applications back then. Each piece of data was assigned a 'code' for input into the company computers. Little did we know, that was the beginning of 'Big' Data.

There is no escaping that data is a foundation of the insurance industry and that the insurance industry has always collected data and made long-term predications regarding pricing, loss trends, and profitability. However, just like the days of 'traditional' underwriting gave way to underwriting that included the use of insurance credit scores, the heydays of insurance credit scores are on the way out.

The continued difficulty of explaining the correlation between how one pays their bills and the likelihood and expense of a policyholder filing an automobile insurance claim has caused the largest insurers to move beyond insurance credit scores and to look at and use other data to enhance their underwriting and pricing. For example, California, one of the largest personal automobile insurance markets in the country does not allow the use of insurance credit scores, yet the state remains one of the most competitive personal automobile insurance markets in the country. This means insurance companies in California and elsewhere have figured out how to price personal automobile insurance without using insurance credit scores.

The use of insurance credit scores in personal automobile insurance underwriting increasingly is being inhanced or replaced with incredible amounts and new types of alternative, unregulated personal individual data. Commonly referred to as Big Data, these extremely large data sets can be analyzed to reveal patterns, trends, and associations related to human behavior, interactions, shopping habits, driving patterns, demographics like race, age, occupation, education, voting history, marital status, work and salary history.

It is this alternative Big Data, often produced by unregulated algorithms that insurance companies use in insurance department rate filings to which I wish

to draw the Subcommittee's attention. Any legislative or regulatory solution that seeks to achieve the goals behind the legislation before the Subcommittee today need look further than the somewhat outdated, narrow issue of insurance credit scores.

To this end, I also need to draw the Subcommittee's attention to the current work the National Association of Insurance Commissioners (NAIC). The NAIC recognizes and has drawn appropriate attention to the use of insurance credit scores and to the use of Big Data in insurance underwriting and pricing. Currently, the NAIC has three working groups focused on the issues before the Subcommittee, today. The NAIC's Big Data (EX) Working Group, Privacy Protection (D) Working Group and Artificial Intelligence (EX) Working Group are each working with the cooperation of the nation's 56 State insurance regulators to develop structures to protect consumers from improper use of Big Data.

My recommendations regarding the legislative proposals pending before the subcommittee are informed by my firm belief that insurance consumer protection is best performed at the state level. Absolutely, there is a role for this Subcommittee and for the Federal Insurance Office (FIO) to work with our state insurance regulators to make certain that credit scores, Big Data and any

other data set is used to fairly and responsibly set personal automobile insurance rates; however, I caution the Subcommittee against imposing a Federal solution to address an issue for which the State insurance regulatory system is designed.

Mr. Chairman, with your permission there are additional academic sources I would like to provide to the Subcommittee under separate cover to be included in the record.

I look forward to answering the Subcommittee's questions.

Drivers of Discrimination
An Examination of Unfair Premiums, Practices and Policies in the Auto Insurance Industry

Written Testimony of Eric S. Poe, Esq., CPA, and Chief Operating Officer of CURE Auto Insurance before the U.S. House of Representatives Committee on Financial Services, Subcommittee on Housing, Community Development, and Insurance, March 4, 2020.

Mr. Chairman and Members of the Subcommittee, thank you for inviting me to testify today on issues related to driver discrimination and the use of economic factors such as education, occupation, and credit scores for rate setting in auto insurance. This is an important issue for the U.S. private passenger automobile insurance arena, which is my company's industry, and I appreciate your interest.

I am the Chief Operating Officer of Citizens United Reciprocal Exchange, or CURE Auto Insurance, a regional auto insurance headquartered in Princeton, New Jersey. CURE is licensed to write private passenger auto insurance in both Pennsylvania and New Jersey. CURE was founded in 1990 and is currently one of the largest direct writers of auto insurance in New Jersey.

Prior to 2003, New Jersey auto insurers were not approved to use credit scores, education level, professional occupation, or homeownership status as factors in rating or underwriting. However, in 2003, New Jersey's desire to attract several new national auto insurers to its marketplace led the regulators to permit these rating factors.[1] It was during this time that CURE analyzed these underwriting methods to determine their validity.

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[1] New Jersey Citizen Action. 2007. "Risky & Wrong: New Jersey Auto Insurance Rates for Lower Income and Minority Drivers: An Analysis of the Impact of GEICO's Use of Education and Occupation on the Price of Auto Insurance." https://www.state.nj.us/dobi/division_insurance/pdfs/ed_occ_april2008.pdf (Attachment 2, accessed on February 24, 2020).

After significant review, CURE determined that while these rating and underwriting variables do correlate to loss ratios, they merely serve as a statistical proxy for income. More notable is the obvious negative impact that allowing credit scores, educational attainment and occupation had on affordability for car insurance in New Jersey for the lower income drivers. Since permitting the use of these obvious income proxies in 2004, in a short 15 years, New Jersey's uninsured motorist rate has almost doubled from 8% to over 15%. While CURE does not employ these factors in its rates or underwriting, the refusal to adopt this practice forces us out of the competition for the most profitable groups to insure. My concern is that in order to stay profitable, and to compete with companies that use these factors for the more profitable groups of insureds, we will soon be compelled to adopt the practice or face losing our more profitable risks to competitors who utilize these factors.

Another Penalty of Being Poor – Car Insurance

There are approximately 30 million uninsured vehicles in the United States.[2] And it's unlikely that any of those are uninsured by choice – because being uninsured is not a choice, but rather it is a function of affordability. Not having the ability to drive because car insurance is too expensive is one of the many penalties of being poor.

The penalties for being poor in America are immeasurable. A person starts with few assets and uses more of their available credit, which lowers their credit score; as a consequence, they pay more interest to borrow money, buy a car, and, if lucky, buy a house. Although it may make sense to charge a higher interest rate to someone with a lower income and fewer assets based on the link between those factors and the increased risk of defaulting on a loan, penalizing someone for simply having a lower income by increasing their car insurance rates flies in the face of fair play. A driver can have a perfect

[2] https://www.statista.com/statistics/533306/number-of-passenger-cars-insured-usa/ (Number of passenger cars insured in the United States in 2015 was 202.68 million) (accessed on March 2, 2020); https://www.valuepenguin.com/auto-insurance/uninsured-motorist-statistics#state-rates (Uninsured motorist rates in 2015 – the latest available statistics - was 13%) (accessed on March 2, 2020);

driving record and still suffer the penalty – solely based on the fact that he or she has a low paying job and few assets. These individuals are caught in a cycle of poverty that is nearly impossible to escape because of these prohibitive costs. Transportation is a fundamental tool, with cars being the primary mode of transportation in most parts of this country. More importantly, without car insurance, a person cannot legally drive in 49 of 50 states. So, as a direct consequence, if a person cannot afford car insurance, that person cannot drive. As recognized by the Michigan Supreme Court in 1978, "the independent mobility provided by an automobile is a crucial, practical necessity; it is undeniable that whether or not a person can obtain a driver's license or register and operate his motor vehicle profoundly affects important aspects of his day-to-day life."[3] From here, the court concluded that "...motorists are constitutionally entitled to have no-fault insurance made available on a fair and equitable basis...[D]ue process, at a minimum, requires that rates are not, in fact, excessive, inadequate or unfairly discriminatory...".[4]

Even knowing these unassailable facts, in virtually every state that requires car insurance, insurance companies are allowed to use obvious income proxies when calculating a person's insurance premium in such a way as to charge substantially more to those individuals with lower incomes. As a result, one of the penalties of being poor is that because so many insurers charge more to people who do not have sufficient resources, many people are forced into a situation where they cannot afford something as basic as car insurance. And without a car, in the vast majority of America, these individuals have no other feasible alternatives for transportation. Without transportation, most educational and employment opportunities are out-of-reach.

The penalties for being poor manifest themselves in the lack of realistic opportunities available to those who are using their limited resources to pay for food and a place to live. Because insurers are allowed to charge more to those caught in this cycle of poverty

[3] Shavers v. Kelley, 402 Mich. 554, 598 (1978).
[4] Shavers v. Kelley, 402 Mich. 554, 600-01 (1978).

solely due to their inability to access and amass wealth, the insurers have become a part of the problem, and the cycle perpetuates. The legislature is empowered to become a part of the solution. Without taking action to ban the use of income proxies in auto insurance, too many individuals will continue to be denied their chance for economic freedom. And if we do not speak up on behalf of those in need, we will continue to see more and more communities decimated by the cruel cycle of poverty.

Education, Occupation, and Credit Scores Independently Affect Insureds' Rates

It is true that no car insurer uses just one or two factors to determine how much someone will pay for auto insurance. And this is why insurers continue to claim that income-related factors such as education, occupation, and credit scores are not the sole driver of the final number and therefore are not significant enough to require a prohibition. But what we have found is that these income-related factors, independent of any other factor, can and do have a significant impact on an individual's premium. In fact, our studies have shown that by simply changing one of these income-related factors, such as a person's education level or occupation, on an auto insurance application, a person can be rejected from GEICO's preferred company (which offers the lowest base rates) and will be charged significantly higher rates in the other GEICO namesake company. So, while these income-related factors may be referred to as "just one" of many other factors in the total, in practice they alone have a significant impact on rates.

The justification from the auto insurance industry I compete in continues to be that "loss ratios" support the use of income-related factors. I am here to explain the fallacy in this logic.

It is well-documented that the auto insurance industry has used illustrations of loss ratio models as justification for using an individual's credit score,[5] education level, and

[5] Federal Trade Commission. 2007. "Credit-Based Insurance Scores: Impact on Consumers of Automobile Insurance: A Report to Congress By the Federal

occupation.[6] By showing statistical correlations of these income-related traits to corresponding loss ratios, the industry has effectively self-validated the use of these factors to measure risk. However, I believe it is important to get a better understanding of the term "loss ratio" as used by the insurance industry in these reports and the "risk" that they are actually measuring. Surprisingly, the "risk" being reported may not be the "risk" of driving unsafely, but rather the "risk" of not being profitable for the insurance company.

By definition, a loss ratio is the incurred losses and loss-adjustment expenses divided by net earned premiums. Stated simply, it is the costs associated with claim losses for a particular group as a ratio to how much was collected in premiums for insuring that particular group. It is important to understand that loss ratio correlations used in this fashion are really used to measure whether the charges are adequate for that particular group, not necessarily their predictive value to the risk of accidents.

Surprisingly, our examination of the studies done relating to credit scores, education level, and occupation led our insurance company to the opinion that an inappropriate conclusion had been drawn. In each such study, when a strong statistical correlation was found to the loss ratio that related to a given rating variable, it led to the inappropriate conclusion that the rating variable must have a predictive value for risk.[7]

Trade Commission." https://www.ftc.gov/reports/credit-based-insurance-scores-impacts-consumers-automobile-insurance-report-congress-federal, footnote. 37, p. 21. (accessed on February 24, 2020). Originally published in Michael J. Miller and Richard A. Smith, "The Relationship of Credit-Based Insurance Scores to Private Passenger Automobile Insurance Loss Propensity: An Actuarial Study by EPIC Actuaries, LLC (June 2003).

[6] State of New Jersey Department of Banking & Insurance. 2008. "The Use of Occupation and Education Factors in Automobile Insurance. "https://www.state.nj.us/dobi/division_insurance/pdfs/ed_occ_april2008.pdf (accessed on February 24, 2020).

[7] Federal Trade Commission. 2007. "Credit-Based Insurance Scores: Impact on Consumers of Automobile Insurance." https://www.ftc.gov/reports/credit-based-insurance-scores-impacts-consumers-automobile-insurance-report-congress-federal (accessed February 24, 2020). Originally published in Michael J. Miller

However, it is important to understand the methodology and underlying assumptions behind these studies to assess their validity. And our company found it important to question why certain character traits were used and others were not. As the famous American author Mark Twain observed: "Facts are stubborn things, but statistics are pliable." I will not burden you with a lengthy explanation of how an infinite number of character trait may show correlations to loss ratios, but that these same loss ratio correlations will become invalid if they can be explained by another characteristic trait imbedded in the chosen variable. That fact alone calls into question the accuracy of all of these studies.

I will offer an example. In 2006, a comprehensive study of more than 15 million policyholders and two million claims showed that individuals who live within one mile of a restaurant, car dealer, elementary school, or liquor store would have an increased likelihood of filing a physical damage claim with their auto insurer when compared with those who do not live within that radius. The study showed that the increase in loss costs for people who lived within a mile of those establishments was 18–30% higher than those who did not.[8] From a cursory glance, it appears that this data would actuarially justify an auto insurer's decision to group drivers who live within one mile of these particular businesses into a class and then charge them a higher rate.

However, because lower-income individuals are more commonly found to be overrepresented in urban areas where it is significantly more likely that their residences will be within one mile of a restaurant, car dealer, elementary school, or liquor store, it may be the imbedded trait of a person's income that, in fact, causes this loss ratio

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and Richard A. Smith, "The Relationship of Credit-Based Insurance Scores to Private Passenger Automobile Insurance Loss Propensity: An Actuarial Study by EPIC Actuaries, LLC (June 2003).

[8] Quality Planning Corporation. 2005. "Why People Who Live Close to Restaurants Are More Likely To Have an Accident and Pay More for Auto Insurance Quality Planning Corporation." http://www.qualityplanning.com/qpc_resources_public/news/051206%20QPC%20Locations_F.htm (accessed on February 24, 2020).

correlation. While merely living within one mile of these businesses does not logically cause someone to be a higher risk, it is reasonable to conclude that, for a claim of small value, lower-income drivers are more likely to file a claim with their auto insurer, while a higher-income driver will often forgo the inconvenient and potential consequences (i.e., higher premiums) of filing the claim.

Additionally, the loss ratios for poorer individuals may also be skewed because many car insurance policies include a form of no-fault health insurance that generally provides some sort of coverage for every member of a household or in a car, generally referred to as personal injury protection coverage, or PIP. In fact, over 30% of the U.S. population lives in a state that requires PIP coverage.[9] Statistics show that individuals with lower incomes are almost nine times as likely to live in a zero-vehicle household.[10] From this assumption, it logically follows that lower-income families have fewer cars per household member; thus there is an increased chance that there will be more people in the car of a lower-income individual. This will, of course, impact loss ratios in a negative way with respect to lower-income drivers.

In summary, if one assumes that the income of an individual is not properly accounted for by other risk factors already used in determining rates for car insurance, then these lower-income drivers will produce higher loss ratios, and one would see a loss ratio correlation to income. More importantly, based on this assumption, any characteristic that is tied to

9 https://en.wikipedia.org/wiki/List_of_states_and_territories_of_the_United_States_by_population (providing population figures) (accessed on February 27, 2020); https://en.wikipedia.org/wiki/Personal_injury_protection#States_with_mandatory_PIP_coverage (providing states with mandatory PIP coverage) (accessed on February 27, 2020).

10 Household, Individual, and Vehicle Characteristics. https://www.bts.gov/archive/publications/highlights_of_the_2001_national_household_travel_survey/section_01 (accessed on February 27, 2020).

income will logically also produce similar loss ratio correlations to those that would be produced by income alone.

We believe that our fellow industry members would rather hide from the public policymakers and regulators by explaining that these rating variables, such as education, occupation, and credit score, possess an unexplainable commonality that produces the correlation to risk. This is statistics, not facts. The fact that the insurance industry should acknowledge is that all of these variables are correlated to income and that it is really income that is correlated to the risk.

Further, in our experience, despite state laws, like the law in New Jersey that requires that "[a]ll underwriting rules shall be subject to public inspection,"[11] the way in which insurers justify the use of these factors appears to be shielded from public review. For example, when New Jersey State Senator Nia H. Gill sought documents concerning the rating criteria used by automobile insurers pursuant to the Open Public Records Act (OPRA),[12] her request was denied.[13] In this instance, the courts concluded that the documents State Senator Gill requested were not "underwriting rules" and, therefore, not accessible to the public. In addition, the court held that they were not discoverable pursuant to OPRA in light of the statute's exemption from the turnover of government records that contain "'trade secrets and proprietary commercial or financial information'."[14] In light of this holding, at least in New Jersey, the relationship and the justification for using income proxies have been shielded from public inspection. Further, we are unaware of any state where these documents have been subject to public inspection. If every insurance carrier were to use these income proxies in rating, there would not be any real "competition" for the low-income drivers. Because, for whatever the reason may be, poorer people might be more expensive to insure, and we can

[11] N.J. Stat. Ann. § 17:29A-46.2b.
[12] N.J. Stat. Ann. § 47:1A–1 to –13.
[13] Gill v. New Jersey Dep't of Banking & Ins., No. A-1801-10T4, 2013 WL 534786, at *1 (N.J. Super. Ct. App. Div. Feb. 14, 2013).
[14] Gill v. New Jersey Dep't of Banking & Ins., No. A-1801-10T4, 2013 WL 534786, at *1 (N.J. Super. Ct. App. Div. Feb. 14, 2013).

concede that poorer people are less profitable to insurers. It is based on these principles that insurers will justify charging poorer people as much as 40% more for car insurance. However, the fundamental purpose of insurance is to spread all risks across multiple classes in order to make insurance affordable to all classes of people. It simply is not acceptable that the poorest people bear the highest proportion of the cost of insurance, making it unaffordable for far too many.

STATE LAWS PROHIBITING DISCRIMINATION IN RATING

Although most, if not all, states have laws that prohibit discriminatory rating practices. Despite the disparate impact that the use of non-driving factors such as education level, occupation, and credit score has on minorities, few states prohibit the use of these non-driving factors. Most, if not all, states have laws prohibiting discrimination in the assessment of auto insurance premiums. For example, in New Jersey, insurers must "make rates that are not unreasonably high or inadequate for the safety and soundness of the insurer, and which do not unfairly discriminate between risks in this State involving essentially the same hazards and expense elements … ."[15]

Likewise, Pennsylvania's law requires that "[r]ates shall not be excessive, inadequate or unfairly discriminatory."[16]

However, despite the prohibition against discriminatory rating practices, these laws have generally not been seen to prohibit the use of non-driving factors such as education level, occupation, or credit scores.

New York is one of the few exceptions. In 2018 in New York, where similar anti-discriminatory statutory language exists, the Superintendent of Financial Services called into question the use of education level attained and occupational status in rating. In doing so, the Superintendent concluded that "insurers' consideration of these factors has

[15] N.J. Stat. Ann. § 17:29A-4.
[16] 40 Pa. Stat. Ann. § 1183(d).

resulted in cases where classes of insureds have been placed in less favorably rated tiers, which may lead to higher premiums, without adequate substantiation that an individual's level of education attained and/or occupational status relates to his or her driving ability or habits such that the insurer would suffer a greater risk of loss."[17] The Superintendent further concluded that, although many insurers were using these factors, the "insurers failed to provide sufficient support for the existence of the necessary relationship for the use of occupational status or any convincing evidence to support the necessary relationship for the use of an insured's level of education attained, whether alone or in combination with occupational status. As a result, the insurers failed to establish that the use of education and/or occupation in establishing initial tier placement was not unfairly discriminatory."[18]

Based on these finding, the Superintendent, by way of regulation, ordered that insurers in New York were banned from the use of either education level obtained and occupational status "in either initial tier placement, tier movement, or the establishment of the rates at all, unless the insurer demonstrates to the satisfaction of the superintendent" that the use of either does not violate the law.[19]

As a result of the recently enacted regulation in New York, Liberty Mutual, Allstate, and GEICO agreed to remove the use of education level attained and occupational status in underwriting new business.[20]

Like New York, Michigan recently enacted legislation that will ban the use of education and occupation in rating, beginning in July 2020.[21] In Michigan, consumer advocates argued that non-driving factors like these lead to far higher rates for those in low-income

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[17] N.Y. Comp. Codes R. & Regs. tit. 11, § 154.6(a)(2).
[18] N.Y. Comp. Codes R. & Regs. tit. 11, § 154.6(a)(2).
[19] N.Y. Comp. Codes R. & Regs. tit. 11, § 154.6(b).
[20] "GEICO to Comply with New York Reg Banning Discriminatory Auto Insurance Rates." https://www.insurancejournal.com/news/east/2018/03/14/483251.htm (accessed on February 26, 2020).
[21] Mich. Comp. Laws Ann. § 500.2111.

or minority communities.[22] Citing to a 2018 analysis from Consumer Federation for America, it was noted that drivers living on the outskirts of Detroit paid 62% more than drivers living on the other side of the street in the much more affluent city of Grosse Pointe.

Between New York's and Michigan's ban on these non-driving factors, by July 2020, almost 10% of America's drivers will no longer be subject to these discriminatory factors.[23] Although we are hopeful that the recent actions of New York and Michigan will set a precedent for other states, we firmly believe that most other states, or at least their less affluent consumers, would benefit from federal intervention requiring a ban of these non-driving factors.

And banning these factors should not have any impact on overall rates. This will not increase the number or frequency of accidents as if we were to ban traffic signals and headlights. This will not increase the severity of accident-related injuries as if we were to ban the use of airbags and seatbelts. In any given state, there will be a certain number of car accidents each year. The number of accidents, and the cost of repairing the cars involved, will not change if there is a ban on the use of income-proxies. In fact, we believe that such a ban will make insurance more affordable to people that are currently uninsured – thereby increasing the overall number of people that are insured. This, in turn, will provide more premium dollars to insurers, who will earn more investment income, and so the overall cost to the industry should go down. Banning the non-driving factors in rating will only redistribute the current costs among all socioeconomic classes of insureds.

[22] Gibbons, Lauren. "Michigan bans on things like zip code, home ownership impacting auto insurance now among strictest in nation." https://www.mlive.com/news/2019/05/michigan-bans-on-things-like-zip-code-home-ownership-impacting-auto-insurance-now-among-strictest-in-nation.html (accessed February 26, 2020).
[23] Bureau of Transportation Statistics, Table 4-2: Licensed Drivers: 2013. https://www.bts.gov/content/licensed-drivers (accessed February 26, 2020).

Furthermore, the best measurement of the function of the insurance marketplace is uninsured motorist rates. In Massachusetts and Hawaii, states that already banned the use of credit scores, uninsured motorist rates are well below the national average. [24] By contrast, in New Jersey, where the use of credit scores is allowed, the uninsured motorist rates are not only above the national average, but these rates have almost doubled since the time that New Jersey mandated the use of credit scores.[25] Insurance may have become less expensive for the highly educated and wealthier people – of which New Jersey has no shortage.: The percentage of people with college degrees in New Jersey is more than that of almost any other state in the country,[26] and the median household income is second in the country.[27] So companies like GEICO, which has 21+% of New Jersey's market share – making it by far the largest auto insurer in New Jersey[28] – are more than happy to come into states like New Jersey and, by using income proxies in their rating, compete only for the highly educated and wealthy drivers who produce the highest profits for them. More importantly, unless competitors adopt similar

[24] https://aronberglaw.com/uninsured-motorist-statistics-2019-uninsured-drivers-state/ (accessed on February 26, 2020)
[25] https://www.valuepenguin.com/auto-insurance/uninsured-motorist-statistics#state-rates (New Jersey's uninsured motorist rates in 2015 – the latest available statistics - were 14.9%) (accessed on February 27, 2020);https://www.insurance-research.org/sites/default/files/downloads/IRC_UM_012109.pdf (New Jersey's estimated uninsured motorist rates in 2007 was 8%) accessed on February 27, 2020)
[26] https://en.wikipedia.org/wiki/List_of_U.S._states_and_territories_by_educational_attainment (accessed on February 27, 2020)
[27] Suneson, Grant, "Wealth in America: Where are the richest and poorest states based on household income?" USA Today, October 8, 2018 https://www.usatoday.com/story/money/economy/2018/10/08/wealth-america-household-income-richest-poorest-states/38051359/ (accessed on February 27, 2020).
[28] "Auto Insurance Companies in New Jersey". https://www.valuepenguin.com/auto-insurance/new-jersey/companies (accessed on February 27, 2020)

rating/underwriting practices that can also use effective income proxies, they will lose out on the most profitable book of business to insure.

STATES THAT HAVE BANNED THE USE OF CREDIT SCORES

Like education level and occupation, most states also allow insurers to use credit scores (or at least aspects of a person's credit history) to set rates. In fact, currently, only three states ban the use of credit scores: California, Hawaii, and Massachusetts.[29] Although CURE does not write insurance in any of these states, and so our experience with the complete impact is limited, studies show that two of these three states, Massachusetts and Hawaii, are below the national average in both average auto insurance premiums[30] and average uninsured motorist rates.[31]

This, of course, belies the position that by banning the use of credit scores, rates and the uninsured population will increase. Much like with education level and occupation, it is unclear when, if ever, other states will follow in the footsteps of California, Hawaii, and Massachusetts, making it imperative that the federal government acts to help make auto insurance affordable to all drivers.

USE OF CREDIT (INSURANCE) SCORES BY THE AUTO INSURANCE INDUSTRY

Tracking the history of the FICO credit score and its current use of three main credit bureaus today, it is clear that the original purpose behind the credit scoring system was to predict the likelihood of a person repaying debts on time and repaying an original

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[29] Cothern, Lance. "Inside The Use Of Credit By Auto Insurance Companies." https://www.forbes.com/advisor/insurance/auto-insurance-score/ (accessed on February 26, 2020)
[30] Megna, Michelle. "Auto Insurance Rates By State." https://www.carinsurance.com/state-car-insurance-rates (accessed on February 26, 2020)
[31] https://aronberglaw.com/uninsured-motorist-statistics-2019-uninsured-drivers-state/ (accessed on February 26, 2020)

loan.[32] We concluded through our analysis that while credit scores by the credit reporting agency did produce a correlation to loss ratios when applied to our own company data, there appeared to be strong evidence to support that the loss ratio correlations could be explained by an alternative variable: the income of an individual. This conclusion was drawn when we learned that an individual's prior on-time payment history to their creditors only constituted approximately 35% of their overall FICO/credit score,[33] while the category that incorporates credit utilization (outstanding balances to available credit) constitutes approximately 30% of their total FICO score.[34] Because credit lines offered by lenders are directly calculated upon a borrower's income and the scoring model reduced a person's credit score significantly based on the consumer's outstanding debt to their granted credit line, we concluded that credit scores used in this fashion is a strong predictor of a person's income.

Illustration of Impact of Income on FICO Credit Score: Based on annual gross income disclosed on a credit application, a low-income individual is granted a $1,000 credit line, while similarly a high-income earner is granted a $20,000 credit line. Assumption: both individuals purchase $800 of groceries for the month on their credit card. If a FICO credit score is calculated during the time when the balance owed on both loans is $800, the negative impact to the lower income individual is far greater because their credit utilization is 80% compared to the higher income individual whose credit utilization is 4%. [the lower income person's credit score will have their credit score lowered significantly due to their excessive credit utilization ($800 of $1,000 available credit= 80% credit utilization) while the

[32] Wozniacka, Malgorzata and Snigdha Sen. 2004. "Credit Scores – What You Should Know About Your Own." http://www.pbs.org/wgbh/pages/frontline/shows/credit/more/scores.html (accessed on February 24, 2020).
[33] myFICO. "What's In my FICO Scores." http://www.myfico.com/CreditEducation/WhatsInYourScore.aspx (accessed on February 24, 2020).
[34] myFICO. "What's In my FICO Scores." http://www.myfico.com/CreditEducation/WhatsInYourScore.aspx (accessed on February 24, 2020).

impact on the higher income individual's credit score is negligible ($800 of $20,000 available credit = 4% credit utilization).][35]

In fact, a Federal Trade Commission (FTC) study that examined the impacts of credit scoring on race shows that the population negatively affected by the use of credit scores also comprises the lowest income earners, according to the U.S. Census. These reported findings provided more support to our conclusion that an individual's income does correlate to loss ratio.[36]

WHY AUTO INSURERS WANT TO ATTRACT AND INSURE HIGHER-INCOME DRIVERS

Higher-income drivers are more attractive to the private passenger auto insurance industry for several reasons: (A) a larger potential revenue stream for other products; (B) data mining; and (C) higher absorption of lower-level claims.

A. POTENTIAL REVENUE STREAMS

For many insurers, auto insurance provides a "foot in the door" to a higher-income driver's other needs, such as life insurance, homeowners insurance, and financial planning products. In this way, higher-income drivers offer a larger revenue stream to auto insurers because they have the ability to purchase other products from multiline insurance carriers such as GEICO, American Express, Liberty Mutual, State Farm, Allstate, and Progressive. A company is happy to offer lower auto insurance premiums when the consumer is also purchasing several other products that make the overall asset package financially attractive to the company.

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[35] Simon, Jeremy. 2007. "Boost your credit score by raising your credit card limit." http://www.creditcards.com/credit-card-news/boost-credit-score-raise-credit-card-limits-1267.php (accessed on April 30, 2019).
[36] Subcommittee on Oversight and Investigations House Committee on Financial Services. "Prepared statement of the Federal Trade Commission on Credit-based Insurance Scores: Are They Fair?" October 2, 2007, p. 6.

Generally, lower-income individuals' most significant assets are their automobiles.[37] The lower-income population is less likely to own a home[38] or a boat, and they are less likely to purchase financial planning services. Lower-income consumers generally do not purchase large life insurance policies or seek to purchase umbrella policies. Therefore, the lower-income population provides no other potential revenue streams for multiline insurance companies, making them less attractive to insure.

B. DATA MINING

Auto insurers desire higher-income drivers for data mining purposes as well. For example, at GEICO.com, despite clear statements to their users that they do not sell any information provided to their company for a quote, when one agrees to the terms and conditions for use of their highly advertised website, one also agrees to permitting GEICO to share one's information with "financial institutions for which we have a joint-marketing agreement."[39]

Although it is not widely known to the public, data mining the information of high-income individuals is a very lucrative business. Many national data-mining companies purchase or barter the information files from the car insurer that contain a person's credit score, occupation, education level, type of car they drive, and where they live.[40] Yes, I said "barter" your information, which in turn lowers the cost for that car insurer that bartered to

[37] According to a 2002 Pew Hispanic Center 25% of Latinos owned no assets other than a vehicle or unsecured liabilities as compared to 6% of Whites. Eric Rodriguez, "Credit-based Insurance Scoring: Why Latinos Pay More for Auto Insurance Than They Should." National Council of La Raza, October 2, 2007, p. 3.

[38] 2007 only half of Latino households own their own homes compared to more than three-quarters of non-Hispanic Whites. Eric Rodriguez, Credit-based Insurance Scoring: Why Latinos Pay More for Auto Insurance than They Should." National Council of La Raza, October 2, 2007, p. 3.

[39] https://media.geico.com/legal/privacy_policy.htm. (accessed February 24, 2020).

[40] Delaney, Kevin J., and Emily Steel. 2007. Firm Mines Offline Data to Target Online Ads. The Wall Street Journal online, October 17: B1.

receive data to market prospectively to higher-income people. This means a car insurer that does not barter/sell the data of those who simply ask for a quote are at an economic disadvantage by not selling off such data. Furthermore, the majority of car insurers run "reverse credit scores" without the submission of an applicant's social security number by using their name and address to look up their credit information on the credit reporting agency database. Although the user may consent to the "terms and conditions" of the insurers website for the insurer to obtain credit reports, it is our contention that an individual who purposefully does not submit a social security number likely has no awareness that this "reverse credit report" is being created and shared with other marketing partners.

C. HIGHER ABSORPTION OF LOWER-LEVEL CLAIMS

The National Highway Traffic Safety Association reported in 2000 that roughly half of all PDO (property damage only) accidents go unreported each year "due to concerns about insurance or legal repercussions." [41] Unfortunately, only those individuals with higher income levels have the luxury of not reporting accidents and instead paying for the damage themselves.

As a result, higher-income drivers are more attractive to the auto insurance industry because higher-income drivers have, and will take, the option to absorb minor claims, paying out of their own pocket, as opposed to filing a claim with the insurance company.

Therefore, it is reasonable to assume that the people who make less are more likely to file claims.[42] As a result, loss ratios on policies most likely will correlate to income, along

[41] National Highway Traffic Safety Association. 2002. "Economic Impact of U.S. Motor Vehicle Crashes Reaches $230.6 billion, New NHTSA Study Shows." http://www.nhtsa.gov.edgesuite-staging.net/About+NHTSA/Press+Releases/2002/Economic+Impact+of+U.S.+Motor+Vehicle+Crashes+Reaches+$230.6+billion,+New+NHTSA+Study+Shows (accessed on February 24, 2020).

[42] Supported in the FTC 2007 study Fig 3, that shows that the correlation to loss ratios are stronger for collision claims, and weaker for bodily injury liability claims.

with any trait that correlates to income. This is why credit scoring, educational attainment, high-income occupations, and homeownership status – which all correlate to income – will have similar correlations to loss ratios. These are not truly different characteristics to comprise the right rate or premium for a policyholder. They are just different ways of putting income into the equation.

INDUSTRY PRACTICES OF MULTI-AFFILIATED COMPANIES

Unbeknownst to consumers, several multistate, multiline car insurance companies have more than one company in each respective state that is licensed to sell insurance in those states. These multiple affiliate companies all bear the company's familiar trademarked name, which leads consumers to believe they are only one entity, in order to disguise to the user when they have been rejected by one of the preferred companies.

Another advantage of using multiple affiliate companies bearing the same trademarked name is that these companies have been successful in distinguishing between the terms "underwriting" and "rating" of polices[43] when ultimately each contributes to deriving the price to charge a consumer for auto insurance. To confuse matters, oftentimes my car insurance industry will try and distinguish the "underwriting" process, which they claim begins when the multi-affiliate group assigns the insured into one of the companies based upon a person's traits, while the "rating" process is when the insurance company uses the rates filed within that affiliate company to determine the final premium to be charged. Despite these distinctions, it is important for the subcommittee to understand that whether you term a variable an "underwriting" variable or a "rating" variable, the use of either term

[43] Federal Trade Commission. 2007. Credit-Based Insurance Scores: Impact on Consumers of Automobile Insurance. https://www.ftc.gov/reports/credit-based-insurance-scores-impacts-consumers-automobile-insurance-report-congress-federal (p.16) (accessed April 30, 2019). Originally published in Michael J. Miller and Richard A. Smith, "The Relationship of Credit-Based Insurance Scores to Private Passenger Automobile Insurance Loss Propensity: An Actuarial Study by EPIC Actuaries, LLC (June 2003).

with education/occupation can have a drastic impact on the final premium charged to an individual.

GEICO'S USE OF EDUCATION AND OCCUPATION FOR "UNDERWRITING"

During our analysis of the competitive marketplace in 2004, we learned that GEICO's ratemaking practices are threaded through its use of up to four separate GEICO insurance companies: GEICO, GEICO General, GEICO Indemnity, and GEICO Casualty. The fact that each entity of GEICO bears the same trademarked name, allows them to give consumers the illusion that they are all one entity. However, this is not the case, as each GEICO affiliate company charges entirely different rates for the same coverages. Drivers qualifying for GEICO's preferred insurance company receive the best (i.e., lowest) rates, while drivers who do not qualify for GEICO's preferred company receive rates from one of GEICO's substandard insurance companies and pay substantially higher rates. By having up to four separate companies to underwrite drivers, and four distinct and separate rates associated with each company, GEICO is able to charge drivers who possess the same rating variables and coverage completely different rates based upon their use of the "underwriting" variable, such as an individual's education level and occupation. Remember, factors such as driving record, geographic location, and car type are considered only after a consumer is placed in one of GEICO's four companies through this process.

Drivers who possess higher educational attainments and hold white-collar occupations are generally granted eligibility into the preferred GEICO company. Conversely, individuals without a 4-year degree and "blue-collar" nonprofessional jobs are typically only offered insurance through one of GEICO's substandard companies and are then offered significantly higher rates.

Most notably, individuals are not even informed when they are rejected by the preferred GEICO company based solely on their education and/or occupation. By purposefully failing to notify applicants of their rejection from the preferred GEICO company due to

their lack of education or professional occupation, GEICO effectively bypasses any public scrutiny of its practice – which places an even larger burden on the legislature to protect the consumer from this practice.

Our comprehensive examination of GEICO's underwriting practices led us to conclude that the only clear trait common among these preferred occupational groups is the traditional higher income levels associated with their occupations, further supporting our conclusion that income is truly the driver of loss ratio correlation and profitability for the GEICO Group of companies.

ALLSTATE'S USE OF HOME OWNERSHIP STATUS AS AN "UNDERWRITING VARIABLE" AND ITS IMPACT ON RACE

A review of Allstate's filings at the same time suggested that regardless of driving record, an individual will not be eligible for their "preferred" company, which offers the lowest rates, if they did not own a home. Such evidence once again supports the contention that higher-income earners produce correlations to loss ratios and profitability. Unfortunately, the result of employing such underwriting rules tied only to homeownership status is that certain minority groups and income classes are underrepresented in the homeownership population in the United States.[44]

CONCLUSION

We believe the issue before the committee can be narrowly isolated to a question of public policy. Unlike products and services provided by other traditional industries, auto liability insurance is mandated in 49 of 50 states. If lower-income drivers cannot afford car insurance, they face fines and possible imprisonment if they chose to drive. The alternative – which is to not drive – effectively closes the door on many (if not most)

[44] 2007 only half of Latino households own their own homes compared to more than three-quarters of non-Hispanic Whites. Eric Rodriguez, "Credit-based Insurance Scoring: Why Latinos Pay More for Auto Insurance Than They Should." National Council of La Raza, October 2, 2007, p. 3.

educational and occupational opportunities. Therefore, a fundamental measure of a healthy and successful insurance pooling mechanism is when an equal opportunity exists for individuals to control the affordability of their car insurance. When insurance that is mandated is unaffordable for any market segment, it is a signal that the system needs correction. Unlike factors such as car usage, type of car, and driving record, which are widely accepted factors that are largely in the consumer's control, the non-driving "income" factors clearly discriminate against lower- income classes and need to be prohibited immediately.

Since the documented proliferation of the use of credit scores and these other more damaging rating and underwriting practices, the reported number of uninsured motorists has continued to grow at an alarming pace.[45] This supports the notion that families at the bottom end of the income scale have very little disposable income, and every dollar spent on premiums for auto insurance represents money that could be spent on other essentials, such as food, shelter, and health care. The difficulty lies in the fact that owning a car can be extremely important in terms of finding and holding down a job or providing an opportunity for a person to climb the economic ladder.

In summary, we urge the Federal Legislature to:

- Make effective bans on the use of all rating and underwriting variables that are inherently tied to the income of an individual;
- Prohibit the use of multi-affiliate companies with separate rating structures that have no valid purpose except to adopt these discriminatory practices; and
- Require full disclosure by definitively not providing OPRA protection for all rating and underwriting methods in order to improve the transparency of these practices to the public.

[45] Insurance Information Institute. 2019. "Compulsory Auto/Uninsured Motorists." http://www.iii.org/media/hottopics/insurance/compulsory (accessed April 30, 2019).

Without these fundamental changes to our industry, it is clear that the highest rates for car insurance will be charged to the segment of the population that can least afford to pay, regardless of whether they are responsible drivers. Furthermore, such rating and underwriting practices will only ensure that those who fall in the highest income scale receive the lowest rates.

I am hopeful that you see the social injustice that belies this practice and continue to take steps to control such conduct.

At CURE Auto Insurance, we firmly believe in healthy competition in our marketplace; however, we simply do not believe in competing while using these discriminatory factors.

Respectfully,

Eric S. Poe, Esq., CPA
Chief Operating Officer
CURE Auto Insurance

Statement of the American Property Casualty Insurance Association

"Drivers of Discrimination: An Examination of Unfair Premiums, Practices, and Policies in the Auto Insurance Industry"

Subcommittee on Housing, Community Development and Insurance
Committee on Financial Services
U.S. House of Representatives

The American Property Casualty Insurance Association (APCIA) respectfully submits this statement to the Committee on Financial Services' Subcommittee on Housing, Community Development and Insurance for its hearing entitled "Drivers of Discrimination: An Examination of Unfair Premiums, Practices, and Policies in the Auto Insurance Industry." APCIA is the largest and most diverse trade organization for the property and casualty insurance industry, with over 1,000 member companies who provide 60 percent of the property casualty insurance in the U.S. and who underwrite most of the nation's auto insurance.

APCIA and our members are committed to three important goals: (1) expanding the availability and affordability of insurance while treating consumers fairly; (2) "being there" for policyholders when the worst happens; and (3) maintaining a heathy and competitive insurance market.

At the outset, let us be clear. The insurance industry works to ensure that the property and casualty market is inclusive and available to everyone. To broadly exclude categories of consumers from purchases is fundamentally inconsistent with open and healthy markets. We work to make insurance widely available in full compliance with legally established standards of conduct, especially prohibitions against discrimination. Violations of state and federal anti-discrimination laws are neither supported nor tolerated by our members or the industry at large.

As the primary regulators of the insurance industry, the States comprehensively and stringently require that auto insurance rates not be *"excessive, inadequate or unfairly discriminatory"* and that they be based on risk. This statutory formulation is understood and applied by regulators and the industry to mean that rates must be based on the actuarially determined risk that a particular policyholder or applicant for insurance presents. In addition, the States have clearly defined illegal discrimination in the insurance context and the nearly 11,000 state insurance regulators have a full panoply of tools ranging from fines through license revocations to enforce rate-setting and discrimination laws in the insurance context.

Understanding that this Committee has multiple bills before it related to the federal regulation of the auto insurance industry, we will not only describe the extensive state based regulatory structure in place preventing discrimination, we will also take this opportunity to explain why we believe these bills would undermine and diminish the effectiveness of state regulatory efforts and the very goals those efforts and this Committee seeks to achieve.

By eliminating actuarially determined, risk-based factors, legislation such as H.R. 1756 unintentionally imperil the very fairness they and the insurance industry are committed to ensuring

in the auto insurance market. Although support for these bills seems to be based on claimed benefits to consumers, we assert, based on extensive research published in academic journals and conducted by state insurance departments, that both bills will in reality do harm to the vast majority of consumers. They will undermine proven, effective state regulation of insurance and the financial health of the insurance market; they will assure that auto insurance rates are less risk-based and as a result less fair; and they will eliminate factors that actually serve as price discounts for many, if not most, policyholders.

Changing insurance pricing from reflecting risk, as both bills would do, artificially makes insurance more affordable for a few higher risk individuals while making it less affordable for the majority of others. The result, contrary to long established state regulatory standards, is to make auto insurance rates excessive for most, inadequate for others and unfairly discriminatory for all. This is not just a pricing issue. By requiring that risk and rates be matched, state standards for rate-setting assure insurer solvency and, thereby, consumer confidence. Departing from those standards not only creates unfairness but imperils solvency and erodes consumer confidence in the insurance market.

Separate from today's focus on anti-discrimination efforts, insurers are keenly aware that auto insurance is regrettably unaffordable for some consumers. We recognize that with auto insurance required in 49 out of 50 states and the reliance that many consumers have on personal automobiles for childcare, work, and jobs, access to affordable auto insurance is paramount. Because of this, we work hard each and every day to make insurance more affordable for everyone through efforts to prevent crashes and reduce crash-related costs that make up the vast majority of each auto insurance premium dollar.

STATE REGULATORY STRUCTURE FOR FAIRNESS, ANTI-DISCRIMINATION AND CONSUMER PROTECTION

Every state and territory of the United States has legislated the same foundational standard and prohibited rates that are *"excessive, inadequate or unfairly discriminatory."* Fundamentally, this means that insurance rates must be risk-based and that similar risks must be treated similarly. In this way, the "excessive, inadequate or unfairly discriminatory" standard balances "fairness" for policyholders and "solvency" for the industry, both of which are essential for healthy and competitive markets. In other words, whether rates are "excessive" is determined based on the risk of loss individual policyholders present and the focus is on "fairness in pricing". Whether rates are "inadequate" is likewise determined based on individual policyholders' projected risk of loss with the focus on solvency for the insurers assuming those risks. Rates are "unfairly discriminatory", according to the statutory standard and related cases, when they result in treating policyholders with similar risk profiles differently [1]

To enforce this standard, 49 of 50 states plus the District of Columbia require insurance companies to file auto insurance rates with state regulators for review and/or approval for the specific purpose of ensuring they do not violate this statutory standard. In addition, many states have enacted

[1] Casualty Actuarial Society, Statement of Principles Regarding Property and Casualty Insurance Ratemaking, Principle 4 (May 1988), https://www.casact.org/professionalism/standards/princip/sppcrate.pdf.

specific definitions of protected classes (such as race, religion, national origin or sexual preference) and have prohibited pricing based on those classes.

Under the current state regulatory framework, insurers create a full risk profile for each policyholder using multiple factors predictive of future losses and relying on historical data. By doing this, consumers are not harmed by reliance on a single risk factor. In contrast, H.R. 1756 give much more weight to the policyholder's prior driving record by prohibiting the use of other factors that have been repeatedly demonstrated to be predictive of future losses. For example, a reliance solely on driving records would punish first-time drivers, immigrants, and low-income families and minorities. While helpful, driving history and driving records alone do not accurately predict the likelihood of a future accident. According to one APCIA member company, 70 percent of auto losses in its nonstandard business and 90 percent of losses on their motorcycle program involve policyholders with no record of past violations. According to the company, having a prior driving violation makes a policyholder only about 25 percent more likely to have a claim, while there are many other factors that have been proven to be more accurate predictors of loss. Adding more weight to the policyholder's prior driving record (as both these proposals do) and eliminating the use of other factors more predictive of loss, not only harms the very consumers the proposed legislation seeks to protect, but also undermines the fairness and solvency purposes of state regulations that require rates to reflect the risk of future losses.

State statutes and regulations requiring rates to reflect the risk of future loss serve important affordability and availability purposes as well. Failing to set rates exclusively based on objective and predictive risk, would result in the following outcomes:

- Lower-risk policyholders would have to be overcharged for insurance, while others would not pay a rate commensurate with the risk they present.
  - When individuals are overcharged relative to the risk they present, some low-risk policyholders opt out of the insurance market where possible, which in turn raises prices for everyone. That, then, leads to more opt outs, which drives prices even higher, thereby continuing the downward spiral in take-up rates and threatening insurer solvency.
  - Where opting out is not possible, there are significant fairness concerns, as individuals posing lower risks are required, in effect, to subsidize riskier policyholders.
- The financial incentive for policyholders to reduce risks (e.g., obey traffic signals and signs, avoid speeding, forego texting while driving or driving while under the influence) would be reduced.[2] When policyholders do not realize the benefit of reducing risk, they have less incentive to take actions that will.
- Where insurers lack the ability to rate risks according to specific risk-profiles, they would likely withdraw from affected lines of business, leading to less availability of insurance and less competition in the market.

As it relates to "fairness" in pricing, our public opinion research indicates consumers expect their insurance premiums to accurately reflect their individual risk of loss. And, they reject notions of

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[2] Avraham, *The Economics of Insurance Law*, 19 Conn. Ins. L.J.at 66-67.

subsidizing the premiums of other, higher risk policyholders for any reason, including for reasons of making insurance even more available.

STATE SOLVENCY REGULATION AND CONSUMER MARKET CONFIDENCE

A primary goal of state insurance regulation is to protect policyholders and the market against insurer insolvency for the purpose of paying consumers' claims. Consideration of factors predictive of risk in setting prices is essential in achieving that goal.[3] As part of solvency regulation, state regulators review insurers capitalization, asset quality, purchases of reinsurance, and their liquidity. The surplus produced to capitalize the business, purchase reinsurance, and facilitate overall liquidity derives not only from the return on investments, the transfer of risk to reinsurers, and other surplus preservation strategies, *but also from underwriting surplus*. And underwriting surplus is the premiums retained after covered losses are paid. The total underwriting surplus over a book of business produces a significant portion of the aggregate surplus that ensures solvency and, thus, the insurer's ability to pay current and future claims. This primary regulatory concern for solvency through underwriting surplus is embedded in state insurance laws that prohibit rates that are "excessive, *inadequate*, or unfairly discriminatory"—the same standard that ensures fairness in pricing for consumers.

If insurers are not permitted to fully take into account actuarial risks in pricing insurance, the underpricing of risk presented by individual policyholders over time across the business would be expected to adversely impact underwriting surplus and hence solvency. Although well intentioned, H.R. 1756 will undermine the state regulatory standards that have assured solvent companies and financially sound insurance markets for the protection of consumers for more than 100 years.

Eliminating risk factors from auto insurance pricing, as H.R. 1756 would do, makes the prediction of future loss less accurate such that the charged premium for individual policyholders will not as closely match the risk the insurer assumes. As a result of this mismatch, the insurer will eventually need to consider not renewing or underwriting certain policies in order to preserve the insurer's ability to pay claims. Eliminating risk factors would compound this effect across the insurance market and, thereby, limit availability more broadly over time.

UNINTENDED CONSEQUENCES OF FEDERAL LEGISLATION AND INTERVENTION IN STATE BASED REGULATION OF INSURANCE

H.R. 1756 is a wholesale intervention into the state-based regulation of insurance, which has succeeded in delivering well-functioning, highly competitive, and financially strong markets for more than 100 years. Additionally, the bills under consideration (and other federal legislation restricting aspects of insurance underwriting) directly undermine the work of State legislatures,

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[3] Shauhin Talesh, *Insurance Law As Public Interest Law*, 2 UC IRVINE L. REV. 985, 1005-06 (2012) ("As articulated by most states, the goals of insurance regulation include fair pricing of insurance, *protecting insurance company solvency*, preventing unfair practices by insurance companies, and ensuring the availability of insurance coverage.") (emphasis added); National Association of Insurance Commissioners, *The U.S. National State-Based System of Insurance Financial Regulation and the Solvency Modernization Initiative* § 2.3 (August 14, 2013), https://www.naic.org/documents/committees_e_us_solvency_framework.pdf ("The state regulatory system in the United States has had over a 100 year history of solvency regulation.").

State regulators and the public by prohibiting factors that have been debated and supported, often by the consumers who would be directly impacted.

Each state routinely reviews rates to assure compliance with legal and regulatory standards and roughly half mandate prior approval even before a rate can be charged in the market. In addition, states engage in market conduct examinations to review and examine, among other things, the usefulness, appropriateness, and impact of certain rating factors. While a very small number of states as a result of market conduct examinations have prohibited the use of some of the factors these two bills prohibit, the overwhelming number of states continue to support and authorize their use having determined that the rating factors targeted by both bills are predictive of risk, benefit consumers and are not unfairly discriminatory.

States have routinely supported the use of risk-based underwriting factors because banning them will result in over-charging most and undercharging others, which is prohibited by state statutes as "excessive" and "inadequate" rates. Aside from the implications for insurer solvency described earlier, eliminating risk-based underwriting factors can be expected to negatively affect availability when low risk, over-charged policyholders opt-out and insurers pull back from underwriting artificially underpriced risks as a result. Insurance rates would be expected to become similar from one insurer to the next, which leads to reduced competition and fewer opportunities for consumers to improve their rates as well as fewer new entrants in the market (including technology firms) to drive innovation.

Following are some of the risk-based factors that some have advocated to prohibit in determining a consumer's eligibility for auto insurance or in calculating the associated premium accompanied by the related consequences for consumers:

- **Gender** is a factor that generally provides a risk-based discount for younger female drivers. According to the Insurance Information Institute, statistically, women have fewer crashes generally, fewer driving-under-the-influence crashes (DUIs) and, most importantly, less serious crashes than men.[4] All things being equal, women often pay less for auto insurance than their male counterparts. And, insurers have adjusted as states increasingly offer alternatives to binary gender identification.

- **Education and occupational status** frequently result in discounts. While some assert insurers use education and occupation as a proxy for income and penalize consumers in low-wage jobs, this is fundamentally untrue. The use of education and occupation is a proven, accurate predictor of risk and they form the basis of affinity group discounts. According to one large writer of affinity groups, both teachers and firefighters have a lower risk profile then doctors, and thereby typically receive lower auto insurance premiums. Additionally, certain professional and educational groups, such as minority chambers of commerce and construction trades, offer discounts to their members through affinity groups. As an example of on-going state review of auto insurance rating, Maryland recently

[4] Source: Federal Highway Administration, Highway Statistics, 2010 – 2017.

conducted an examination of the use of education and occupation and affirmed the importance of risk-based pricing, saying their use does not violate Maryland law.[5]

- **Employment status,** like education and occupational status, allows for affinity group discounts for people in designated fields and its elimination would negatively affect a wide range of incomes and groups. Additionally, the use of employment is again a risk factor that is not used as a proxy for income. For example, according to a recent Insurify report, dry cleaners have better driving records than chiropractors. And police detectives have better driving records than fitness club managers.[6]

- **Homeownership status** allows insurers to reduce their operational costs and pass the savings on to consumers by allowing the bundling of policies.[7] According to one APCIA member, it is also very predictive as a variable on its own.

- **Zip code, adjacent zip codes and census tracts** are risk-based measures reflecting different driving and other conditions that are directly relevant to the comparative risks of being in a crash or having a claim covered by the auto policy. Auto insurance is a package policy with liability, property damage and uninsured motorist coverages that for a claim require other people or property. In reality, the likelihood of a claim against any of those coverages increases when the number of people and vehicles increase. The State of Missouri in a recent study found that there are certainly differences in average rates between zip codes but that the differences reflect differences in insured costs.[8]

- **Marital status** has generally been used to reduce otherwise higher costs for single people.

- **Credit based insurance score or consumer report**, more fully discussed below, is a proven risk-based rating factor that serves as a discount for most policyholders. Credit scores are different from credit-based insurance scores. Credit scores measure the likelihood a borrower will repay a debt. Credit-based insurance scores measure a consumer's propensity to file an insurance claim and the cost of such claim. Insurers are required by state law to make exceptions in credit-based insurance scores for extraordinary life circumstances.

- **Previous insurance status** can be used to estimate the driving history of a policyholder and it serves as an indication of the policyholder's regard for insurance requirements imposed on consumers by the states (e.g., financial responsibility and rules of the road).

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[5] Maryland Insurance Administration, Market Conduct Examination Report of the Property & Casualty Business of Government Employees insurance Company, GEICO Casualty Company, GEICO General Insurance Company and GEICO Indemnity Company, prepared by R. Steven Orr, Insurance
Commissioner, June 8, 2006.

[6] *See,* https://insurify.com/insights/occupations-with-the-best-and-worst-drivers/

[7] *See,* https://www.thebalance.com/how-to-get-a-home-owner-discount-on-car-insurance-527534.

[8] *See,* https://insurance.mo.gov/reports/documents/PrivatePassengerAutomobileInsuranceInMOrev7-11-2017.pdf.

Banning these factors will have a negative impact on availability of coverage—a problem that does not now exist. By allowing insurers to effectively differentiate based on the probability of future loss, the prohibited factors allow insurers to provide MORE coverage because they have a better understanding of the aggregate risk they assume. Banning these factors also penalizes consumers who are lower risks by requiring them to subsidize higher risk consumers. And, as at least one company has indicated, banning risk-related factors will likely shrink the company's risk appetite.

To reiterate, APCIA's public opinion research indicates that consumers expect their auto insurance premium to accurately reflect their individual risk of loss and they reject subsidizing the premium of higher-risk policyholders. Contrary to this desire, the legislation will create subsidies because premiums will be less risk-based and, as a result, a less accurate reflection of each policyholder's risk.

CREDIT-BASED INSURANCE SCORES (CBIS) AND THE PROVEN BENEFITS FOR CONSUMERS.

CBISs are significantly different from traditional credit scores. Credit scores measure the ability and likelihood of a borrower to repay a debt. Credit-based insurance scores measure the propensity of a policyholder or an applicant for insurance to file an insurance claim and the cost of such claim. CBISs have been thoroughly researched and their relationship to risk has been demonstrated by government and private studies alike. The most extensive federal report is the 2007 FTC Report to Congress entitled, "Credit –Based Insurance Scores: Impacts on Consumers of Automobile Insurance".[9]

More recently, a 2016 report entitled, "Empirical Evidence on the Use of Credit Scoring for Predicting Insurance Losses with Psycho-social and Biochemical Explanations" published in the North American Actuarial Journal found as follows: "Credit scores predict insurance losses in automobile insurance at a statistically significant level. In fact, they are among the most useful predictor variables available to underwrite and price automobile (and homeowners) insurance."[10]

The introduction of CBIS corresponded with the increase in availability of auto insurance from insurance companies and a decrease in the populations of shared markets as well as pools for difficult to insure drivers established by the states. According to the 2018 NAIC Auto Insurance Database Report[11] and APCIA calculations, from 2013 to 2015 (most current), the personal auto shared market liability earned exposures (vehicles) have dropped approximately 24 percent.

By considering credit-based insurance scores (along with other familiar factors such as driving experience, previous claims, and vehicle age), insurers can develop a more complete picture of a consumer's insurance risk.

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[9] *See,* https://www.ftc.gov/reports/credit-based-insurance-scores-impacts-consumers-automobile-insurance-report-congress-federal.

[10] Linda L. Golden, Patrick L. Brockett, Jing Ai & Bruce Kellison (2016), Empirical Evidence on the Use of Credit Scoring for Predicting Insurance Losses with Psychosocial and Biochemical Explanations, North American Actuarial Journal, 20:3, 233-251, DOI: 10.1080/10920277.2016.1209118. p.15.

[11] *See,* https://www.naic.org/documents/web_market_share_190304_2018_property_lob.pdf.

The State of Arkansas, for example, publicly released a report in 2017 that showed 57.4% of the time that credit-based insurance scores were used in underwriting auto insurance policies, the consumer saw a decrease in premium. While 19.2% of the time, the use of credit-based insurance scores was a neutral factor and did not have any impact on the premium. [12]

Like Arkansas, the Vermont Insurance Commissioner in a 2016 report entitled, "A Study of Credit-based Insurance scoring for Motor Vehicle Insurance" drew a similar conclusion. "Compared to vehicles with premiums using credit-based insurance scores, the median annual premium is $219 higher when credit-based insurance scores are not used to assist with calculating premiums. If the use of credit-based insurance scores was prohibited, approximately two thirds of vehicles with premiums calculated with credit-based insurance scoring would see an increase in premium."[13]

Credit-based insurance scores are clearly predictive of future insured loss, even when compared to traditional factors like prior driving experience. This is true, in part, because diversions and plea bargains for traffic offenses (for example, probation before judgment) combined with the failure to report low-cost crashes under state statutory thresholds means state motor vehicle records are often incomplete. Based on the foregoing studies, if credit-based insurance scores were prohibited nation-wide, most policyholders would see premiums increase because the prediction of future risk is less accurate.

STRONG STATE REGULATION OF CBIS AND CONSUMER PROTECTION

In addition to consumer protections under federal law (including the Fair Credit Reporting Act, as amended) the use of CBISs are regulated by most states through specific state-enacted legislation based on the National Conference of Insurance Legislators' (NCOIL) Model Act Regarding Use of Credit Information in Personal Insurance. The NCOIL model act provides the following additional consumer protections regarding insurers' use of credit information:

- Insurers may not use a score that is calculated using income, gender, address, zip code, ethnic group, religion, marital status or country of nationality as a factor.
- Insurers may not develop a renewal rate or deny, cancel or non-renew coverage solely on the basis of credit information without an independent factor and the independent factor may not include a prohibited factor – namely, income, gender, address, zip code, ethnic group, religion, marital status or country of nationality.
- Insurers must give special consideration to people in the absence of credit information.
- Insurers may not take an adverse action unless the credit information has been calculated within the last 90 days.
- Insurers must refresh the credit information used.
- Insurers may not use the following as negative factors: credit inquiries not initiated by the consumer, insurance inquiries, collection accounts with a medical industry code, and multiple lender inquiries.
- Extraordinary life circumstances when brought to the attention of the insurer, must provide reasonable exceptions for a catastrophic event, serious illness or injury of person or

[12] *See,* https://insurance.arkansas.gov/uploads/resource/documents/2017credit.pdf at p.4.

[13] *See,* https://legislature.vermont.gov/assets/Legislative-Reports/Credit-based-Insurance-Scoring-Report-12-15-16.pdf at p.2.

immediate family member, death of family member, divorce, identity theft, involuntary interruption or temporary loss of employment, military overseas deployment or other events.

- If the credit information is wrong, the insurer must re-underwrite or re-rate the policyholder.
- Insurers must provide upfront notification of the use of credit information.
- Insurers must provide adverse action notifications with reason codes.
- Insurers must file their scoring models with the states in which they are authorized to do business.

Even where not specifically enacted, NCOIL's model act and its consumer protections have become the de facto standard for the auto insurance industry nationwide.

AFFORDABILITY IS A PRIORITY WE SHARE

As an industry, we recognize that auto insurance is regrettably unaffordable for some people. Accordingly, we work to reduce the underlying costs that make up roughly 80% of the auto insurance premium dollar (which includes claims costs like health care, auto repair and litigation-related expenses and awards). Examples of insurers' affordability efforts include:

- Creating and supporting the Insurance Institute for Highway Safety and Advocates for Highway and Auto Safety;
- Communicating with policyholders and the general public on how to avoid crashes;
- Advocating for highway safety measures including primary enforcement seatbelt legislation, anti-texting and driving and other distractions, anti-drunk and other impaired driving laws;
- Advocating for measures to reduce medical, litigation, and repair costs; and
- Working with communities and law enforcement to reduce fraud and auto theft.

It is far better to achieve affordability via reductions in claims-related costs rather than through artificial rate constraints. The former saves lives and consumer resources while avoiding the unintended consequences of the latter.

STATE AUTO INSURANCE MARKETS ARE WELL-FUNCTIONING BY OBJECTIVE MEASURES

Congress has repeatedly affirmed state-based insurance regulation [14] and has intervened only where there was a demonstrated market failure.[15] The auto insurance market exhibits no such indications of market failure. In fact, the personal auto insurance market as measured by relevant metrics is a well-functioning market.

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[14] The 2010 Dodd Frank Act

[15] The National Flood Insurance Program and/or The Terrorism Risk Insurance Act.

- **Number of Companies –** Approximately 2,300 insurers write property casualty business in the U.S. and more than half of them (1,220) provide auto insurance with a low degree of concentration, which according to the Herfindahl-Hirschman Index means the industry is close to a perfect level of competition.[16]
- **Distribution Channels – According to an APCIA member,** there were an estimated 36,500 independent agencies in the United States in 2018, joined by thousands of captive agents combined with online and telephone sales options.
- **Complaints –** The states record far less than one complaint for every 12,000 consumer interactions.[17]
- **Solvency –** The insurance industry rating agency AM Best maintained its Stable outlook for the U.S. property casualty insurance industry segment for 2019.[18] And, AM Best's latest report on company impairments in the insurance industry (incl. P/C and L/H) indicates new company impairments continue to trend lower, with only 3 impairments in 2018.[19]
- **Reasonable Profits –** The 2009-2018 10-year average RONW shows the all-industry return of 13.7% is 140% higher – or 2.4 times larger – than the p-c industry 10-yr average of 5.7%; the p-c industry 10-year average RONW is 58% less than the all-industry 10-year average.[20]

Our greatest concern is that the proposed legislation will disrupt and destabilize an otherwise well-functioning state insurance market, harm consumers by removing discounts, create availability problems when they do not now exist and establish the precedent for more such unnecessary and potentially harmful interventions in the future.

Critics who support the proposed bills often point to California. The rate regulatory system in California is very different from most states and it reflects public policies made under a unique combination of circumstances that led to Proposition 103. That combination of circumstances was: (a) rapidly rising costs from an increasing number of crashes and (b) court decisions that allowed the imposition of third-party bad faith damages.

The California market was disrupted for years during the transition to the new regulatory system. And, the claimed savings actually resulted from reductions in crash-related costs through highway safety and anti-fraud measures (which state regulators and insurers both supported), combined with the reversal of the most troubling judicial decisions on appeal. Perhaps most telling is this –

[16] The Herfindahl-Hirschman Index (HHI) is a common measure of market concentration and it is used to determine market competitiveness. The U.S. Department of Justice classifies any market with an HHI under 1,500 as unconcentrated and any market with an HHI over 2,500 as highly concentrated. An HHI lower than 1,500 indicates nearly perfect competition for the targeted market. The HHI for the property and casualty insurance market is 302.2.

[17] Lawrence S. Powell, PhD, "Big Data and Regulation in the Insurance Industry". 2017, Alabama Center for Insurance Information and Research, University of Alabama

[18] Bests Market Segment Report, "2019 Review and Preview: U.S. Property/Casualty", February 26, 2019.

[19] *See,* http://www3.ambest.com/bestweek/DisplayBinary.aspx?TY=P&record_code=286570&URatingId =1344286&AltSrc=22

[20] APCIA using NAIC Report on Profitability By Line By State in 2018, 2019 edition

since Proposition 103 was adopted by California more than 30 years ago, no state has followed California's example.

We also note that critics often use quote generation webpages to arrive at their conclusions. But while these websites may provide an initial quote for some comparison purposes, the actual premium charged may vary from the quote depending on further underwriting data to better establish the risk-based price that most accurately reflects the future risk presented by the policyholders.

CONCLUSION

State regulated auto insurance markets are characterized by financial strength, competition, inherent fairness, and consumer protection. There is no evidence at the state or national level that supports the preemption of state regulation of auto insurance, as H.R. 1756 would do.

Although well intentioned, the proposed bills will make auto insurance rates far less risk-based and outlaw factors that provide discounts for many policyholders of widely different income levels. Over the last 100 years, the state regulation that currently governs the business of property and casualty insurance has produced a framework that delivers fairness to consumers and ensures a solvent and competitive insurance marketplace, which makes insurance widely available.

Federalizing insurance regulation by restricting risk-based pricing in a fundamental way will bring about second and third order consequences that erode the fairness, solvency and availability of insurance products that state regulation has been designed to deliver. We therefore respectfully ask you to reject H.R. 1756 and the FAIR Study Act and instead work with us to address the underlying causes of unaffordability wherever and for whomever they exist.

Report of commissioner, Kevin M. McCarty

Florida office of insurance regulation

The use of Occupation and Education as underwriting/rating factors for private passenger automobile insurance

March 2007

EXECUTIVE SUMMARY

The Office of Insurance Regulation ("Office") held a public hearing on February 9, 2007 in Tallahassee to review the use of occupation and education as underwriting or rating factors for private passenger auto insurance and its potential impact on Floridians.

In Florida, as well as nationally, the insurance industry has had a checkered past in its use of race and other proxy factors that intentionally or unintentionally negatively impact minorities and low-income individuals. While the use of race as a rating factor was outlawed in Florida, the two factors mentioned above, occupation and education, have emerged in the rating and underwriting of auto insurance and appear to be highly correlated to race and income-level.

Under some rating plans, consumers with more professional occupations (doctors, lawyers, architects), and advanced college degrees are being offered preferred driver rates. Conversely, individuals with blue-collar jobs, and a high school education or less are paying higher premiums for similar risk factors, as exhibited by several online quotes for auto insurance requested by the Office from one of the major auto insurance writers in Florida. With all other factors remaining equal, except for changes to the online applicant's education and occupation, the results were startling. One online quote comparison demonstrated a significant difference in the quoted auto insurance rate when the two factors are adjusted, accounting in that instance in a 300% higher rate for the less educated and less skilled applicant.

Testimony at the public hearing on February 9, 2007, and documents received and reviewed prior, during and after the hearing reveal:

- ***There is a demonstrable correlation between occupation, education and income-level and ethnicity, which was not disputed by the insurance industry.***

- ***Insurance industry representatives all claim ignorance of the relationship between occupation, education and income-level and race despite the existence of publicly available U.S. Census Bureau Data***

- ***Insurers do not collect data from consumers on race or income-level, and refuse to study the impact of underwriting practices on minority and low-income consumers.***

- ***The insurance industry does not believe that corporate responsibility extends to ensuring its practices do not disparately impact minority or low-income Floridians; but instead maintains that it is the Florida Legislature's responsibility to define public policy on this matter in the insurance marketplace.***

- ***It appears that wealthier individuals are more likely to pay small claims out-of-pocket, and avoid making insurance claims, giving some occupations better loss ratios despite higher accident rates.***

- ***As measured by one company's use of occupation and education the magnitude of the premium difference can be very significant.***

- ***Companies that do not use occupation and education as rating factors may potentially be at a competitive disadvantage because they may lose the wide range of business offered by higher income policyholders. Foregoing whatever predictive value these factors may have might also put these companies at a disadvantage. Thus, from an economic point of view, this practice is likely to proliferate regardless of its negative effects on policyholders struggling to overcome disadvantages.***

- ***While the prohibition of the use of these factors, much like in the prohibition of the use of race, could lead to some economic inefficiencies in insurance markets, it may be beneficial to the overall economy and citizenry to prohibit use of these factors as a matter of public policy***

- ***At least one major auto insurer that currently uses education and occupation as part of its underwriting, asserts it would absolutely not use these factors if it were determined the factors had a disparate impact on protected classes.***

- ***A national insurance organization whose members write 56 percent of the private passenger auto insurance market in Florida stated that a public policy concern can override the use of these factors even if there is an actuarial basis for it.***

The transcript of the public hearing held on February 9, 2007, consisting of two volumes, is attached to this Report as **Exhibits 1 and 2**.

BACKGROUND ON THE USE OF EDUCATION & OCCUPATION AS RATING FACTORS

One of Florida's greatest strengths is its rich culture and ethnically diverse population. Regrettably, Florida has another history: one of slavery, Jim Crow laws, as well as discrimination that led to the modern civil rights era. This willful discrimination was pervasive and permeated the institutions of education, government, and commerce --- even the insurance industry. While Florida leaders have since prohibited the use of factors such as race in determining employment and housing decisions, some vestiges of discrimination remain.

In 2000, the National Association of Insurance Commissioners ("NAIC") initiated a Race-Based Premium Working Group to examine the use of race-based premiums for life insurance. The Office was an active participant in this endeavor, which included a questionnaire to all life insurance companies nationwide about past practices. This ultimately resulted in several multi-state market conduct examinations, and multi-million dollar settlements to correct past wrongdoing.

The review period varied based on the company, but usually encompassed 1900-1970, although many policies were still "on the books." The findings were disturbing. Historically several life insurance companies bifurcated rate tables for "Caucasian" and "not-Caucasian," charging higher rates for non-Caucasians. Company documents offered a very interesting defense for this policy: they claimed this was not discriminatory, but merely reflected the statistical differences between life expectancies for Caucasians versus non-Caucasians. Although there may have been some validity to this statement, the insurance industry does not exist in a moral, ethical, or historical vacuum. Despite this "actuarial justification," legislatures around the country banned the use of race regardless of the statistical reasoning.

In reaction to these changes, some companies adjusted their underwriting standards in an unexpected manner: they began to use other factors that served as proxies for race and income status. The two most notable factors included education and occupation.

According to one multi-state examination report concluded by Maryland[1], after the race question was deleted from the application in the 1960s, several companies "appeared to use occupation as a substitute for race." ***Occupations subject to substandard rating included maids, bootblacks, busboys, car wash workers, garbage or ash collectors and janitors.*** The multi-state reported noted, "Non-Caucasian workers were disproportionately represented in the [these] disadvantaged occupations."

The report further compared rating books before and after race was removed from the application and noted:

1) The rating books removed race from the rating methodology, and
2) Occupational Rating Classification replaced the use of race, and
3) No other changes were made.

Both the company and regulators agreed the company engaged in "socio-economic underwriting." All four states involved in the examination, Maryland, Florida, Pennsylvania and Virginia believed there was enough evidence to conclude that the use of occupation in this instance violated all four states' statutes regarding non-discriminatory practices.

In a similar examination conducted by the State of Ohio a rating book for Cooperative Life Insurance Company[2] (CLIC), not only was there ***a substandard rating for occupations like butlers, barbers, valets, cooks, elevator operators and waiters — but the rating book warned against, "low-grade industrial or illiterate types."***

[1] The State of Florida, Pennsylvania, and Virginia also joined this examination. Monumental Multi-State Exam Report # 789-00 (Maryland).
[2] Actuarial Report – Race Based Pricing Activities with Respect to the Life Insurance Business of Nationwide Life Insurance Company, July 6, 2004 – State of Ohio.

THE USE OF OCCUPATION AND EDUCATION AS RATING FACTORS CONTINUES

The presumption that the use of occupation and education as rating factors ended with the conclusion of the aforementioned life insurance industry multi-state examinations is erroneous. The venue, however, has changed --- to the underwriting and rating of private passenger auto policies.

On March 20, 2006, the Consumer Federation of America ("CFA") issued a press release warning that the nation's fourth largest auto insurer, GEICO, was using occupation and educational attainment to rate auto insurance policies, and that Liberty Mutual Insurance and Allstate Insurance were beginning to use these rating factors as well. J. Robert Hunter, Director of Insurance for CFA, and the former Insurance Commissioner for the State of Texas, challenged state insurance regulators to ban the use of education and occupation for rating policies as these factors are highly correlated with race and income level.

In response, The Property Casualty Insurers Association of America (PCI), a trade association that represents 1,000 member companies that write roughly 40% of the nation's property & casualty business issued its own press release on March 21, 2006. The PCI defended GEICO's use of education and occupation as "valid factors for insurers to use in the marketplace."

As early as 2004, the Office began taking active measures to have auto insurers remove the occupation and education variables from the insurers' underwriting/rating plans used in Florida. In 2004, as a condition of "approving" a filing, those auto insurers using either occupation or education, or both factors, in their underwriting plans were advised to cease doing so within 1 year.

In response to these measures taken by the Office, AIG, in a letter dated May 5, 2004, expressed that AIG "is amiable to remove this factor [occupation] from our scoring models contingent on the following conditions: The [Office] promulgate a Regulation that requires all personal automobile writers to stop using the occupation factors at the same time, or, all carriers using this factor have agreed to remove the factor within the same time frame."

While Florida law specifically outlaws the use of race for rating insurance policies, there is no specific statutory prohibition against using potential proxy factors that are highly correlated to race, such as educational attainment and occupation that would create a disparate impact on racial minorities and low income Floridians.

Section 627.917, Florida Statutes, states that the Financial Services Commission can establish a uniform statewide risk classification reporting system for auto policies provided it does not discriminate based upon race, creed, color or national origin. Pursuant to this private passenger auto risk classification reporting system statute: "The classification system may include any difference among risks that can be demonstrated to have a probable effect upon losses or expenses ..."

The insurers that have begun to use occupation and/or education as rating factors claim these factors are predictive of losses, and thus are not prohibited by Florida Statute, regardless of the potential impact. The auto rating statute states that rates are not unfairly discriminatory with respect to a group even though they are lower (and, by implication, higher) than rates for nonmembers of the group. Rates are only unfairly discriminatory if they clearly fail to reflect equitably the difference in expected losses and expenses or if they are not actuarially measurable and credible and sufficiently related to actual or expected loss and expense experience of the group to assure that nonmembers of the group are not unfairly discriminated against. It is this definition that governs the Office's determination of whether a rate is unfairly discriminatory.

THE PUBLIC HEARING ON THE USE OF OCCUPATION AND EDUCATION AS RATING FACTORS FOR PRIVATE PASSENGER AUTO INSURANCE

The Florida Insurance Commissioner, through a Notice of Hearing to the industry, as well as subpoenas directed to auto insurers currently using occupation and education as rating factors, compelled testimony from the industry, consumer advocacy groups, and from the public to explore this issue, and the rationalization underlying the use of these factors. Members from four insurance groups testified including GEICO, Liberty Mutual, the AIG Insurance Group, and New Jersey CURE Auto Insurance. In addition, members from insurance trade organizations including the Property and Casualty Insurance Association of America (PCI), the Consumer Federation of America, the National Association of Mutual Insurance Companies (NAMIC), the Insurance Information Institute (III), the Florida Insurance Council, the Florida Justice Association, and Florida's Consumer Advocate also testified.

The issue is simple: allowing the use of occupation and education as rating factors appear to disproportionately favor non-minorities and higher-income individuals while negatively impacting minorities and low-income individuals by charging these groups, albeit somewhat indirectly, higher auto-insurance rates relative to others with similar risk characteristics.

Following the Office's attempts in 2004 to have automobile insurance carriers in the state remove the two factors, the Office began monitoring this trend, and has recently been very specific in not "approving" the rate filings that use the two factors at issue, but instead, warning companies that although the Office is concerned about the impact of these practices, it does not have statutory authority to deny these practices. While the Office has not "approved" these plans, it had no other recourse under current statutes and rules but to allow them to come into effect due to the deemer provisions of the law.

This issue also has gained national attention following the Consumer Federation of America's letter to all insurance commissioners explaining its research regarding

GEICO's practices. In 2006, Commissioner McCarty commissioned an internal study of the correlation between education/occupation and ethnicity and income, which found strong correlations, ultimately concluding that logically any plan that utilized these factors would negatively impact minorities and low-income individuals.

Prior to the public hearing, the Office identified eight main investigatory questions to understand these issues:

1. Is there a correlation between occupation/education and race and/or income status?
2. Is the insurance industry aware of such correlation between occupation/education and race or income?
3. Does the insurance industry believe its corporate responsibility extends to ensuring its policies do not negatively impact people due to race or income-level?
4. Has the insurance industry researched the impact of its practices on Floridians as it relates to minority or low-income individuals?
5. Is there a correlation between occupation/education and loss ratios and or accident statistics?
6. If it is demonstrated the use of occupation and education negatively impact protected classes, what is the magnitude of this impact?
7. If the Florida Legislature does not change the laws, and this practice is allowed to proliferate, what will be the potential impact on the auto insurance industry?
8. If these factors were not allowed for underwriting factors, would the auto insurance industry still be competitive?

THE CURRENT USE OF OCCUPATION AND EDUCATION AS RATING FACTORS

Even before the eight investigatory questions are explained, it is important to understand how the industry is currently using occupation and education. Although a few industry representatives stated broadly, "they have been using these factors for years," the current incarnation of the usage of these factors is a relatively new phenomenon, and is utilized in different forms by three auto insurers in Florida that collectively write approximately 17.1% of the auto insurance market in Florida, insuring over 1.9 million vehicles.

The testimony elicited the forms of current use, and revealed several critical facts. It is important to understand that these factors can be used in two different phases: (1) Underwriting --- which is to determine whether to insure the individual; and (2) Rating –

which is to determine the actual premium paid by the customer. During this investigation, the Office learned about another practice, which is a blending of underwriting and rating, the practice of "tiering"

GEICO utilized "tiering" most directly, and this report will use this company's experience as an example. Currently GEICO has four companies that operate in the State of Florida: Government Employees Insurance Company (which is the origin of the name "GEICO" but does not technically incorporate that acronym), GEICO General, GEICO Indemnity, and GEICO Casualty. During the underwriting phase, a customer will apply for coverage on-line or via a telephone operator, and believes they are applying for coverage from "GEICO." Based on the underwriting criteria (including occupation and education), customers are placed into different companies. The preferred-risk customers are placed into Government Employees Insurance Company or GEICO General (with the lowest rates), the intermediate-risk customers are placed into GEICO Indemnity, while the sub-standard risk customers are placed into GEICO Casualty. Based on GEICO's placement statistics, it appears that customers gaining the preferred status (and lowest premiums) are far more common:

GEICO Coverage in Florida, 2006

Company	# of Insured Vehicles	Avg. Annual Premium
GEICO /GEICO General	990,262	$938.70
GEICO Indemnity	174,823	$1,183.70
GEICO Casualty	110,613	$1,474,90

It also appears that GEICO is not equally receptive to all segments of the population (favoring those with higher education and better occupational status). During the testimony, the Office learned that customers are usually not informed they were rejected for the preferred company (Government Employees Insurance Company or GEICO General), and placed into another company.[3]

[3] GEICO is currently defending itself against a lawsuit filed in 2006 in federal court by several African-Americans who were either former or current GEICO policyholders, alleging that the use of education and

Liberty Mutual has two companies writing auto insurance in Florida, Liberty Mutual Insurance Co. (the preferred company with lower rates), and Liberty Insurance Co. (sub-standard risks and higher rates). In the initial determination, occupation, employment status, and education are determinants for being offered coverage from Liberty Mutual Ins. Co. In response to direct questioning during the public hearing, Christopher Cunniff, VP of Personal Marketing, stated, "Yes, it is possible that some small segment of customers, the use of that variable [education and occupation] does push their slotting decision from one company to another."[4] However, once in the insurance companies, education and occupation are not used as rating factors by the Liberty Mutual Companies. This contrasts with GEICO, where further tiering decisions are made within each company.

One potential problem of this "slotting" technique is that individuals may be "parked" in the substandard risk company. Even if a person achieves a higher level of education, or changes to a more preferred occupation, they can only switch companies after three years, "if they are clean," remarked VP Cunniff.[5]

The American International Group, Inc. ("AIG") Companies use occupation, but do not use education in their underwriting and premium practices. While AIG does have three auto insurers writing in Florida, AIG does not use the same type of "tiering" techniques used by GEICO and Liberty Mutual, but places customers based on their distribution channels. However, within their underwriting tiers (which ultimately affects rating and premiums), occupation is used as a determining factor.

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occupation factors are discriminatory or have a discriminatory impact, Patricia Amos, et al. v. GEICO, U.S. District Court for the District of Minnesota, Case # 06-cv-1281. Transcript of public hearing, Volume 1, page 81, lines 2 – 14; Vol. 1, page 88, lines 8 – 13. GEICO states the allegations are "absolutely baseless".

[4] Transcript of public hearing, Volume 1, page 97, lines 14 – 17.
[5] Vol. 1, page 97, lines 23 – 25.

The Office is vested with the responsibility to ensure rates are not "excessive, inadequate, or unfairly discriminatory,"[6] and it appears that these underwriting and rating factors will *prima facie* result in higher premiums for those who can least afford it: lower-income, and less educated individuals.

I. Is there a correlation between these factors and race and/or income status?

Although racial differences between education and occupation have narrowed since the "Jim Crow" period examined during the race-based life insurance premiums initiative --- a wide gap still exists.

The U.S. Census Bureau conducted a comprehensive study of race/ethnicity and occupation in for its *Selected Occupational Groups by Race and Hispanic Origin for the United States, 2000.* The table below, based on U.S. Census Bureau Data, shows disparities among the types of jobs by different races & ethnicities:

Category	Management, Professional, & Related Occupations
Caucasian & Asian*	**37%**
Black/African American	**25%**
Hispanic or Latino**	**18%**
American Indians, Native Alaskans, Hawaiians, & Pacific Islanders	**24%**

* *Non-Hispanic*
** *Any Race*

Although this is national data, we can still observe dramatic differences: Caucasians and Asians are twice as likely as Hispanics to have management or professional jobs.

[6] Section 627.0651, Florida Statutes.

The chart below, based on data from he U.S. Census Bureau, shows educational attainment also has large disparities across ethnic and racial groups in Florida:

Bachelor's Degree or Higher
Florida, 2005

Category	Percent with Degrees
Caucasian & Asian*	29%
Black/African American*	13%
Hispanic or Latino**	21%

** Non-Hispanic*
*** Any Race*

Source: U.S. Census Bureau: Educational Attainment of the Population 18 Years and Over, by Age, Sex, Race Alone, and Hispanic Origin, for the 25 Largest States: 2005

Unlike the occupational data, this is Florida specific data, and also shows large disparities: Caucasian and Asian non-Hispanics are more than twice as likely to have a college degree as Blacks/African Americans.

For both occupation and education, as a group, Caucasians and Asians are more likely to have professional and managerial jobs, as well as college degrees. Not only would utilizing these factors negatively impact minorities (as a group), but also using a combination of these factors may magnify the "inequality effect."

II. IS THE INSURANCE INDUSTRY AWARE OF SUCH CORRELATION BETWEEN OCCUPATION/EDUCATION AND RACE OR INCOME?

Although one may think it is "common knowledge," that there are inequalities in America that contribute to minorities being less likely to obtain college degrees, or have higher incomes, shockingly the representatives of the insurance industry claim to be oblivious of such a relationship. In fact, at times the public hearing was reminiscent of hearings involving the tobacco industry where tobacco lobbyists claimed there were no studies proving tobacco use caused cancer.

Asked pointedly by Commissioner McCarty whether the use of occupation and education would disparately impact protected classes of minorities, Hank Nayden, VP and General Counsel for the GEICO group answered, "...to our knowledge, there is no credible data and no credible study reflecting that."[7] Later in the testimony, Commissioner McCarty asked the same witness if he has looked at the U.S. Census Bureau data on this relationship between occupation and race, Mr. Nayden conceded, "I have not."[8]

The Commissioner again emphasized this question with representatives testifying on behalf of Liberty Mutual. Asking whether the company had looked at U.S. Census Bureau data regarding the relationship between occupation, education, and race and/or income, Christopher Cunniff, VP of Liberty Mutual's Personal Marketing admitted, "I have not, and I'm not aware of anyone at Liberty who has."[9]

Similarly, during the questioning of AIG company representatives, when asked by Deputy Commissioner Belinda Miller about studies showing relationships between occupation and income or race, Mr. Fedak VP of AIG Direct's Southeast Region, answered, "I'm not aware of any studies, other than analyzing our own book of

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[7] Vol. 1, page 38, lines 7 - 10.
[8] Vol. 1, page 50, line 24.
[9] Vol. 1, page 101, lines 23 – 24.

business."[10] Further questioning revealed that since AIG does not collect data regarding ethnicity or income, no such relationship studies could be performed based on their book of business.

The industry's denial of knowing about the statistical correlations between education, occupation and race and/or income strained credulity, Steve Parton, General Counsel for the Office asked rhetorically whether this was "willful blindness" by the industry. However, it should be noted that CFO Eric Poe of New Jersey CURE Auto Insurance Company committed to not using this factors stated:

> ***"...for an entire industry that is predicated on how smart we are, we would be probably the dumbest industry in the world not to know that those statistical correlations exist."***[11]

III. DOES THE INSURANCE INDUSTRY BELIEVE ITS CORPORATE RESPONSIBILITY EXTENDS TO ENSURING ITS POLICIES DO NOT NEGATIVELY IMPACT PEOPLE DUE TO RACE OR INCOME-LEVEL?

Based on the testimony presented February 9, 2007, the simple answer appears to be "no."

During his testimony at the public hearing, Alex Hageli of the Property & Casualty Insurance Association of America (PCI) stressed that as long as the outcomes are actuarially based, the insurance company should be allowed to use it. . Moreover, when asked about disparities in outcomes and whether that should be allowed he stated, "I believe that's a question the Legislature needs to address."[12]

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[10] Vol. 2, pages 160 – 11, lines 25 and 1.
[11] Vol. 1, page 33, lines 14 – 17.
[12] Vol. 2, page 128, lines 15 –18.

When asked to contemplate hypothetical variables like eye color, cell phone usage, the number of plasma TVs in the household or birth order, Mr. Hageli answered plaintively, "If there's an actuarial basis for it, it should be used unless there is some overriding public policy concern"[13] Later when asked pointedly about the use of race in rating life insurance (as it was conceded African-American's have lower life expectancies than Caucasians), Mr. Hageli implied it could be used, "Except for the fact that it's prohibited by law."[14]

Other industry representatives did not go this far. Commissioner McCarty asked GEICO representatives, "If, in fact, it were determined, hypothetically, that it [using occupation and education as rating factors] had a disparate impact on protected classes, would GEICO continue to use it?"[15] Mr. Nayden of GEICO responded, "absolutely not."[16] However, after presented with U.S. Census data showing disparities, Mr. Nayden seemed unconvinced of the relationship: "And to our knowledge, there is no credible data and no credible study reflecting that [disparate impact]."[17]

When Commissioner McCarty asked the same question of Liberty Mutual's representatives: "If education and occupation criteria used in underwriting or rating were shown to have a disparate impact on protected classes of people ...would your company continue to use it?"[18] Mr. Cunniff of Liberty Mutual waffled: "Well that's a hypothetical question which I can't answer, and certainly we wouldn't comment in advance on business plans with our company."[19]

While they too did not specifically state it is the companies' responsibility to understand these relationships, the AIG companies were less vociferous in defense of this practice. Mr. John Fedak, VP of AIG Direct's Southeast Region summarized their companies' position: "...if the OIR requires insurance carriers to remove occupation from the rating

[13] Vol. 2, page 135, lines 17 – 21.
[14] Vol. 2, page 141, lines 13 – 14.
[15] Vol. 1, page 37, lines 20 – 23.
[16] Vol. 1, page 37, line 24.
[17] Vol. 1, page 38, lines 7 – 8.
[18] Vol. 1, page 101, lines 3 – 8.
[19] Vol. 1, page 101, lines 9 – 12.

process, our tiering model will be revised and will become less accurate in predicting losses."[20]

In summary, the industry does not seem to believe that it is within their corporate responsibility to ensure that rating and underwriting practices do not negatively impact society, as long as the practices have actuarial justification. Instead, it is the perception of the industry that this is a public policy question, and it is the responsibility of the Florida Legislature and regulators --- not the insurance industry to ensure these practices do not negatively impact society.

IV. HAS THE INSURANCE INDUSTRY RESEARCHED THE IMPACT OF ITS PRACTICES ON FLORIDIANS AS IT RELATES TO MINORITY OR LOW-INCOME INDIVIDUALS?

The insurance industry professes ignorance as to the relationship between occupation, education and income-status or race, and believes it is the Florida Legislature's responsibility, not that of the industry, to determine what factors are inappropriate. Given these facts, it should not be surprising the industry has not researched this question. It has not.

Yet what is surprising is the industry has established a mechanism that makes it impossible for any auditor to research this specific information by intentionally never collecting any relevant data. While the industry portrays this as the moral high road because policyholders may be offended by being asked information about income or race, it uses the resulting ignorance to claim that anything it may do cannot possibly be discriminatory because it does not even have race or income information. The argument confuses intent with results but sounds appealing at first.

The State of Florida application for employment asks the ethnicity and age of the applicant on a voluntary basis for information purposes (to ensure non-discrimination),

[20] Vol. 2, page 155, lines 1 – 4.

while mortgage companies and credit card companies routinely request income information. Insurers make hyperbolic statements such as, "No study has shown our policies have a disparate impact". Such statements are true by tautology --- no study can be conducted without the information of the race and income level of the applicant.

This opinion was most passionately advocated by Mr. Nayden of GEICO who stated, "There is no study that finds that the use of education or occupation as a risk selection characteristic has an adverse impact on minorities or low income individuals."[21] Yet, when asked whether GEICO could collect and/or analyze this data to determine potentially negative impacts, Mr. Nayden responded emphatically, "We have no interest in collecting or analyzing any data on race."[22] This comment was echoed by Mr. Cunniff of Liberty Mutual: "Liberty does not ask or measure or track either income or race, so we have no internal studies ..."[23] We may observe that no external studies are possible either, given that the entities in control of the information desire to remain blissfully ignorant.

To demonstrate the nexus between occupation groups and income level, Eric Poe of the CURE New Jersey Auto Insurance showed that GEICO's rating manual offered the worst (highest premium) category for military personnel in Pay Grade E-4 or lower, which equates to someone earning less than $24,000 a year.[24] Based on GEICO's 2004 rating manual filed with the Office of Insurance Regulation – this is correct.

In response Mr. Nayden remarked the Office has "an old underwriting guideline," but the newer guidelines do not use military pay grades.[25] However, upon further questioning by Susan Dawson, Assistant General Counsel with the Office, Mr. Nayden admitted GEICO currently uses military rank, which is highly correlated to income level within the military.[26]

[21] Vol. 1, page 46, lines 5- 8.
[22] Vol. 1, page 38, lines 20 – 22.
[23] Vol. 1, page 113, lines 17 – 21.
[24] Vol. 1, page 22, lines 9 – 23.
[25] Vol. 1, pages 41 - 42.
[26] Vol. 1, page, 42, lines 22 – 25, and page 43.

The industry's position is that using education and/or occupation is "blind" based on race or income. Yet, without collecting any data on this issue, the impact itself must remain invisible. Some of the occupations in GEICO's preferred auto group include doctors, lawyers, and engineers while those in the lowest rating categories include blue and gray-collar workers, service and long-haulers, it is difficult to fathom how their policies could not produce a negative impact on disadvantaged groups.

While the Office agreed that collecting information about race and income could be perceived as offensive, minorities and low-income individuals may be equally offended to learn much larger proportions of them are paying higher rates than the majority racial group and higher income white-collar professionals, and are being rejected by the preferred companies within an insurance group without their knowledge.

V. IS THERE A CORRELATION BETWEEN OCCUPATION/EDUCATION AND LOSS RATIOS AND OR ACCIDENT STATISTICS?

Underlying the industry's entire argument is a statistical correlation between occupation, education and auto loss ratios. Representatives from AIG were even more specific, in that by using multivariate regression analysis, there is an *independent* relationship between occupation and auto loss ratios, which can be demonstrated when other factors are held constant. Regrettably, these data cannot be reviewed in this report as some of this involves proprietary information.

During the public hearing, Attorney Susan Dawson elicited testimony from representatives from GEICO regarding a 2003 study completed by Quality Planning Corporation, a division of Insurance Services Office, Inc. (ISO). This study showed that several white-collar careers had higher risk for an accident:

2004 Quality Planning Corporation Study
Accidents Per 1,000 Per Year

Rank	Occupation	Accidents per 1,000
# 1	Student	152
# 2	Medical Doctor	109
# 3	Attorney	106
# 4	Architect	105
# 5	Real Estate Broker	102
# 6	Enlisted Military	99
# 7	Social Worker	98
# 8	Manual Laborer	96
# 9	Analyst	95
# 10	Engineer	94

Many of these occupations including medical doctor, attorney, architect, and engineer appear in GEICO's most preferred rating class.

When asked to explain this apparent discrepancy, Mr. Hageli of PCI speculated that certain jobs may require travel at unusual hours, or be subject to greater distractions (including cell phone usage) causing a greater risk of accident.[27] When pressed for an example, he gave a real estate broker. Yet, Mr. Hageli's explanation seemed unconvincing, as high cell phone usage by attorneys, doctors, and real estate brokers should make their premiums higher --- not lower.

A better explanation was presented by Eric Poe of New Jersey CURE Auto Insurance who stated, "Studies have shown up to 50 percent of eligible claims are not even reported to insurance companies because of the fear that their rates will go up. Unfortunately, lower income individuals do not have the ability to make that choice."[28] For evidence, Mr. Poe cited a report by the 1998 Joint Economic Committee from the U.S. Congress.

Paul Lavrey, actuary for GEICO, agreed stating that "our experience would be based on what we know about, which is the losses that are reported." Moreover, "I'm sure some

[27] Vol. 2, page 126, lines 21 – 25.
[28] Vol. 1, page 14, lines 7 – 9.

claims aren't reported and we don't know about them so we wouldn't have that."[29] Regarding the number of claims that are not reported Mr. Nayden added, "We're not aware of a study, but we would certainly like to review it, if you have one."[30] Mr. Cunniff, of Liberty Mutual, did try to offer a better defense of this stating that many auto claims are third party claims that would be difficult to nonreport, moreover, there are some legal requirements that require multi-car accidents to be reported.[31]

Yet the end result is the same, assuming both the industry studies showing preferred white-collar jobs like doctors, lawyers and architects, have lower loss ratios, yet according to Quality Planning's study have greater amounts of car accidents, it does appear there is some "self-insurance." Basically, wealthier consumers are paying lower-amount claims out-of-pocket rather than filing claims.

VI. IF IT IS DEMONSTRATED THAT THE USE OF OCCUPATION AND EDUCATION NEGATIVELY IMPACT PROTECTED CLASSES, WHAT IS THE MAGNITUDE OF THIS IMPACT?

Another factor is the amount of the effect. Even assuming occupation and education are accurate predictors of auto loss ratios, and that industry data has roughly similar experience in this regard, it does seem odd that the variations among insurers are of such a significant magnitude, especially given its actuarial basis.

AIG Company representatives (which use only occupation, not education) assert the differences are not significant: "There's a potential in certain extreme circumstances for a person's tier that they're assigned to move by two tiers based on the occupation variables, and that would result in approximately a 30 percent rate difference."[32] When

[29] Vol. 1, page 77, lines, 16 – 22.
[30] Vol. 1, page 78, lines 8 – 12.
[31] Vol. 1, page 109, lines 11 – 20.
[32] Vol. 2, page 168, Mr. Bowman's testimony.

asked specifically whether it could be higher, Mr. Fedak stated, "That would be a maximum."[33]

While the Liberty Mutual testimony focused on other areas, the GEICO testimony elucidated several interesting numbers regarding differences in occupation, education, and its affect on premiums. One of the reasons GEICO is easy to analyze is that it has an interactive rate estimator on its website which can be used to see the effect of specific occupations and education levels while holding other demographic information constant. The Office of Insurance Regulation presented three comparisons:

	High School/ Blue-Collar	Advanced Degree/ Professional	% Difference
Comparison 1[34]	$4,225.36	$1,403.59	201%
Comparison 2[35]	$884.84	$714.04	24%
Comparison 3[36]	$1,027.29	$1,280.79	25%

Eric Poe of New Jersey CURE Auto Insurance stated the differences varied by as much as 50-70%, although in some cases the difference could be as much as 200% as in Commissioner McCarty's example.[37]

While GEICO representatives seem to imply these were isolated incidents, interestingly a reporter from the St. Petersburg Times conducted his own research on his vehicle, comparing the rates for "Bob" --- a 50 year-old janitor with no high school education, and "Joe" a Ph.D. computer executive attempting to insure the same 2002 Toyota Camry in

[33] Vol. 2, page 168, line 6.

[34] Example included a single male, age 23, living in Hialeah, with a 2000 Chevrolet Malibu LS, 4 door sedan, Drives up to 15,000 miles a year, one speeding ticket, no accidents within 3 years. BI limits $15,000/$30,000; PD $10,000; PIP $10,000 with $250 deductible; UM: $15,000/$30,000; non-stacked, Comprehensive $500 deductible, Collision $500 deductible. Six-month policy.

[35] Example included a single male, age 25, living in Jacksonville, with a 2005 Honda Accord, 4-door sedan, Drives up to 15,000 miles a year, one speeding ticket, no accidents within 5 years. BI limits $25,000/$50,000; PD $25,000; PIP $10,000 with $0 deductible; UM: $25,000/$50,000; non-stacked, Comprehensive $500 deductible, Collision $500 deductible. Six-month policy.

[36] Example included a single male, age 24, living in West Palm Beach, with a 2002 Buick Park Avenue, 4-door sedan, Drives up to 15,000 miles a year, one speeding ticket, no accidents within 3 years. BI limits $15,000/$30,000; PD $10,000; PIP $10,000 with $250 deductible; UM: $15,000/$30,000; non-stacked, Comprehensive $500 deductible, Collision $500 deductible. Six-month policy.

[37] Vol. 1, page 12, lines 7 – 11.

the Tampa area.[38] His results: Bob the janitor would be pay premiums 66% higher for the exact same vehicle.

While GEICO claims their models incorporate up to 27 factors, it does appear that some factors are given greater weight than others --- and that education and occupation factors may be more important than miles driven, marital status or age in calculating an insurance premium.

VII. If the Florida Legislature does not change the laws, and this practice is allowed to proliferate, what will be the potential impact on the auto insurance industry?

The problem is simple: if occupation and education are truly predictors of loss, the companies that do not adopt these practices are at a competitive disadvantage vis-à-vis insurance companies that do adopt this practice.

The most pervasive use of this practice is currently that of GEICO, which is the third largest private passenger auto writer in Florida, and the fourth largest writer in the United States.[39] In a statement to the Commissioner and the panel, Mr. Cunniff of Liberty Mutual observed, "I would say that as a general rule we are aware of what competitors are doing."[40]

In their defense, Mr. Nayden of GEICO used as evidence GEICO's double-digit growth and that "the company's growth across all occupations and educational levels give the lie to any notion that certain individuals are being harmed by our underwriting practices."[41] The fact that nearly 1 million policyholders are in GEICO's preferred company, while less than 300,000 have policies with the substandard companies casts serious doubt on

[38] "GEICO Gives Different Rates for Drivers Depending on their Jobs," St. Petersburg Times, Robert Trigaux, February 12, 2007.
[39] Vol. 1, page 35, lines 15 – 17.
[40] Vol. 1, page 119, lines 23 – 25.
[41] Vol. 1, page 48, lines 9 – 15.

this assumption --- while all companies may be growing, GEICO companies appealing to those with higher occupation and more professional occupations seem to have achieved greater market penetration.

In his testimony, Eric Poe stated about CURE New Jersey Auto, "...we [the insurance community & state government] have to make moves to ban the use of this or we are going to be compelled to adopt this rating practice."[42] The Consumer Federation of America voiced its agreement, "...GEICO's continued use of the education and occupation criteria will lead to negative competition in the insurance marketplace and that it will encourage GEICO's competitors to follow suit, because those competitors will see that GEICO is taking away their more affluent clients."[43]

Based on the testimony provided, it would appear that auto insurer's use of these factors is poised to increase. These factors, could lead proliferate within the auto insurance industry, in much the same way that the use of race as an underwriting factor became pervasive throughout the life insurance industry between 1900 to 1970.

VIII. IF THESE FACTORS WERE NOT ALLOWED FOR UNDERWRITING FACTORS, WOULD THE AUTO INSURANCE INDUSTRY STILL BE COMPETITIVE?

Other than having predictive value, the main argument for the inclusion of education and occupation as rating factors is the concept of competition. Perhaps best articulated by Dr. Robert Hartwig of the Insurance Information Institute, "...a system of rates that accurately reflects risk and costs is fair and it is equitable. States that restrict actuarially valid underwriting criteria implicitly subsidized drivers with relatively poor records at the expense of the state's better drivers."[44]

[42] Vol. 1, page 10, lines 7 – 18.
[43] Vol 2, page 149, lines 7 – 12.
[44] Vol. 2, page 193.

Even more dramatically, representatives from PCI stated this will lead to overall price increases: "When you have less competition, you have less market forces forcing prices down," Mr. Hageli continued, "If you begin, as regulators, to tell them what they can and cannot do, they're going to be more conservative. I mean that to me seems to be pretty commonsensical."[45] NAMIC also agreed, "... limitations and restrictions on underwriting freedom stifle innovation and thereby hamper competition, ultimately harming consumers and society in general."[46]

These arguments do have some merit. However, this can be applied to all types of regulation --- as regulation, whether it be standardizing forms that people can understand, prohibiting use of specific language in advertising, or creating solvency requirements to ensure against bankruptcy --- all regulation implicitly limits freedom of insurance companies in exchange for a perceived societal benefit.

The one statement that remained unanswered was posed by the Insurance Commissioner Kevin McCarty during the testimony of PCI: "Certainly the life insurance business is as robust today as it's ever been and we don't allow race-based rates."[47] Moreover, in the same vein, disallowing the use of a factor by all companies (in this instance race) creates a level playing-field for all insurance companies to compete based on factors that are allowed. Based on information received as part of the Office's investigation of this matter, companies that use the factors view the college-educated population as a more profitable group. Companies that do not use occupation and education as rating factors may potentially be at a competitive disadvantage because they may lose the wide range of business offered by higher income policyholders.

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[45] Vol. 2, page 131, lines 14 – 20.
[46] Vol. 2, page 185, lines 4 – 14.
[47] Vol. 2, page 131, lines 8 – 13.

Florida's Office of Consumer Advocate also agrees, "I believe that if a particular rating variable has an extraordinary disparate impact on a particular prohibited class or group of prohibited classes, that that variable in effect is a proxy for prohibited classes and should be prohibited."[48] Thus, even though some inefficiencies in the auto insurance market may be created by disallowing the use of factors such as race, income level, or factors that may be intentional or unintentional proxies for race and income levels such as credit scores, occupation and education --- the prohibition of such use may be in the public interest, despite modest insurance sector inefficiencies. The relationship between race and income is illustrated by data from the U.S. Census' "Income, Earnings, and Poverty From the 2004 American Community Survey," issued August 2005:

Median Incomes by Race

Race and Hispanic Origin	Men	Women
Caucasian alone	$42,707	$32,034
Caucasian alone, not Hispanic	$45,573	$32,678
African-American alone	$32,686	$28,581
American Indian	$32,113	$25,752
Asian alone	$46,888	$36,137
Hawaiian and Pacific Islander	$32,403	$27,989
Other Race	$26,679	$23,565
Two or More Races	$37,025	$30,729
Hispanic Any Race	$26,749	$24,030

Median Incomes by Education

Education	Men	Women
Less than High School	$21,760	$13,280
High School Graduate	$31,183	$19,821
Some College or Associates Degree	$37,883	$25,235
Bachelor's Degree	$52,242	$35,195
Graduate or Professional Degree	$68,239	$46,004

[48] Vol. 2, page 217, lines 16 – 21.

Median Incomes by Occupation

Occupational Fields	Men	Women
Management	$65,393	$48,118
Business and Financial Operations	$57,922	$42,256
Computers and Math	$66,130	$56,585
Architecture	$64,496	$51,581
Health Care Practitioner	$69,124	$45,380
Health Care Support	$25,774	$22,658
Farming, Fishing	$22,124	$17,098
Construction	$33,064	$29,289
Transportation	$31,840	$22,434
Personal Care and Service	$27,258	$19,789
Educational	$47,963	$36,891
Office and Admin Support	$35,216	$29,006

One of Florida's greatest strengths is its rich culture and ethnically diverse population, and it would be unfortunate if the insurance industry, through its practices, either intentionally or unintentionally, engaged in discriminatory practices based on a person's ethnicity or income status. Similar to credit scoring, it is possible that clear legislation with rule making authority will be needed to restrict the use of education and occupation as underwriting and rating factors.

INSURANCE INFORMATION INSTITUTE

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March 4, 2020

The Honorable William Lacy Clay, Chair,
The Honorable Steven E. Stivers, Ranking Member,
U.S. House of Representatives Committee on Financial Services
Subcommittee on Housing, Community Development, and Insurance
2129 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Clay and Ranking Member Stivers:

Thank you for soliciting input from the Insurance Information Institute (Triple-I) on two proposed measures that would affect providers and consumers of automobile insurance:

- H.R. 1756, an amendment to the Fair Credit Reporting Act that would prohibit use of credit information in underwriting or rating auto insurance policies; and
- An unnumbered proposal, the Fair Auto Insurance Ratemaking Study Act of 2020, that would require the Federal Insurance Office (FIO) to conduct an annual study of personal private auto insurance "to analyze the accessibility of affordable private passenger automobile insurance coverage."

Please allow me to introduce myself. I am Sean Kevelighan, Chief Executive Officer of Triple-I since August 2016. Before that I was Group Head of Public Affairs for Zurich Insurance Group and have held various posts in insurance, banking, and the public sector. Triple-I is a nonprofit organization that, since 1960, has empowered consumers with our unique, data-driven insights on insurance. Our membership comprises nearly 60 percent of all premium written in the United States and includes eight of the nation's 10 largest auto insurers. Most significant, we do not sell insurance or advocate directly (lobby) on policy matters.

As a trusted source of insurance information for six decades, we welcome the opportunity to comment on the likely impacts of these proposals.

H.R. 1756

Property-casualty insurance is regulated by states, and as such, the insurance industry works closely with each and every state to fulfill a consistent mandate that individual consumers rates that are not excessive, inadequate, or unfairly discriminatory. As a practical matter, that means the riskiest consumers should pay the highest rates and the least risky pay the least.

Insurance companies work hard to fulfill this obligation.

Over the decades, insurers have found many ways to measure the risk consumers present. One of the most effective is the insurance credit score – also known as a credit-based insurance score – one of several adjustments applied to create a rate appropriate to the customer's riskiness.

The practice, introduced in the late 1980s, has been studied numerous times, including by state regulators and the Federal Trade Commission. Most recently, in 2019 Triple-I and the Casualty Actuarial

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- States have already regulated credit scoring. Three have banned it, and the others regulate it in other ways.
- Banning credit scores will increase premiums on safer drivers and reduce premiums on riskier ones.

Fair Auto Insurance Ratemaking Study Act of 2020

The proposed legislation would require the Treasury Department's Federal Insurance Office (FIO) to conduct an annual study of personal private auto insurance. It appears the FIO would be required to annually gather premiums charged and quoted from insurers that write personal auto coverage. It would also gather all rating factors, underwriting guidelines, and any information used to compile those factors and guidelines. These would be married to census tract, zip code, and other information to study whether there is disparate impact by race, religion, national origin, gender, marital status, sexual orientation, level of education, consumer credit score, and homeownership status.

This would be an enormous undertaking, affecting what is arguably one of the most heavily regulated industries in the United States, if not the world. Beyond this, it is important to put into context that there are more than 250 million private automobiles and trucks in the United States.[3] Eighty-seven percent are insured.[4] Information from more than 150 million insurance policies would have to be gathered.

But the dataset would be much larger than 150 million records. The proposal also asks for every quote issued to policyholders and other applicants. Each renewal policy gets at least one quote – the renewal at existing terms. Anyone who shops for insurance receives more than one quote.

A 2015 Insurance Information Institute survey indicated that 69 percent of insurers shopped their policies at renewal. Fifty percent talked to an agent; 39 percent shopped online; 37 percent shopped via telephone.[5] Some people shop via an online aggregator, which generates quotes from several different companies. All of these would have to be gathered. Hundreds of millions of people shop online, and an online shopper generates multiple quotes. And some insurance companies offer online quotes of their competitors. Apparently, all of these would have to be gathered as well.

Some of these quotes would not be for real business. The Consumer Federation of America, for example, frequently generates quotes using hypothetical data to investigate insurers' rating practices.[6] ProPublica generated **30 million** hypothetical quotes in its investigation into auto insurance.[7] From an insurer's perspective, it would seem nearly impossible to distinguish a real quote from a hypothetical quote, so presumably all of these would enter the database.

Who would be supplying this data? According to National Association of Insurance Commissioners (NAIC) data accessed via S&P Global Intelligence and reviewed by the Insurance Information Institute,

[3] Federal Highway Administration, State Motor Vehicle Registrations – 2015.
[4] Insurance Information Institute, "Facts and Statistics: Uninsured Motorists."
[5] Insurance Information Institute, "Insurance Shopping in the Digital Age."
[6] For example: Consumer Federation of America, "Low-Income Drivers Looking To Increase Auto Insurance Coverage Pay A $254 Average Annual Penalty Compared With Customers Who Already Had Higher Coverage."
[7] Jeff Larson, Julia Angwin, Lauren Kirchner, Surya Mattu, "How We Examined Racial Discrimination in Auto Insurance Prices."

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- Introduce an onerous reporting and analysis burden on both insurers and the FIO, with little to no benefit for consumers;
- Discourage innovation by requiring insurers annually to make their proprietary information available to competitors; and
- Duplicate or replace existing state laws and regulations.

Thank you for the opportunity to contribute I.I.I.'s knowledge and expertise to this important conversation.

Sincerely,

Sean Kevelighan
Chief Executive Officer
Insurance Information Institute

Statement of the U.S. Chamber of Commerce

ON: Drivers of Discrimination: An Examination of Unfair Premiums, Practices, and Policies in the Auto Insurance Industry

TO: U.S. House of Representatives Committee on Financial Services, Subcommittee on Housing, Community Development, and Insurance

BY: Center for Capital Markets Competitiveness, U.S. Chamber of Commerce

DATE: March 4, 2020

Introduction

The U.S. Chamber of Commerce ("the Chamber") believes that all financial products should undergo proper underwriting that accurately measurers the risks to the issuer. Restrictions on the types of information that can be used for underwriting could create new risks for issuers or decrease the availability of financial products they can make available. The introduction of new risks would likely have knock-on effects in the financial markets as firms are compelled to invest in more conservative assets or increase their reserves to account for changes in their liabilities. Congress should defer to the well-developed regulatory structure of the states to avoid unintended consequences for consumers, insurance providers, and financial markets.

The Chamber commends the Committee's attention to concerns that have been raised about inappropriate discrimination in the underwriting of automobile insurance. Discrimination on the basis of race is wrong under any circumstance and should have no place in our financial system. We are prepared to work with the Committee to have a transparent dialogue about the market for automobile insurance to address the Committee's concerns.

Insurance Underwriting Depends on Actuarially Reliable and Predictive Data

Broadly speaking, the Chamber believes the use of appropriate data – both in quality and quantity – is paramount for underwriting financial products. This is true for consumer financial products, such as insurance policies and loans, but the principle is equally applicable to assessing the creditworthiness of a business. The more reliable and predictive information that can be used in the assessment of risk the better – prohibiting the use of information actuarially related to insurance risk, such as credit history, may reduce the confidence of underwriters risk assessment.

Insurance companies rely on predictive data to underwrite actuarially sound policies they make available to consumers. The data set may include a wide variety of information; generally speaking, more information permits for a more precise and more confident assessment of risk. Importantly, data points cannot be analyzed in a vacuum. Oftentimes, it is their relationship with one another that provides a reliable indication of risk. For example, all other risks factors being equal, a driver located in a city might be more at risk of damage to his or her car (due to congestion, driving habits of others etc.), than a driver located in an area with a lower traffic density. However, the impact of garaging location on the driver's overall risk may be reduced

if he or she only drives the car a few times per year (thus limiting the car's time on the road). Insurance companies are using data points that have been actuarially demonstrated to relate to risk – they are not arbitrary data points. This is demonstrated by the mere fact that insurance companies have historically encountered very few failures in a very competitive marketplace: they are charging policyholders sufficient premiums to satisfy future claims based on a risk assessment when the policy is issued.

Credit based insurance risk scores are an important indicator of risk for underwriting automobile insurance. According to the National Association of Insurance Commissioners, there is a correlation between certain credit characteristics and insurance risk.[1] A comprehensive study by EPIC Actuaries found that a consumer's credit-based insurance score is directly connected to that consumer's propensity for auto insurance loss.[2] And according to FICO, approximately 95% of auto insurers and 85% of homeowners insurers use credit-based insurance scores in states where it is a permissible underwriting or risk classification factor.

Importantly, insurance companies have been able to increase the availability of insurance products through advances in underwriting. This underwriting may include new models for analyzing risk, and it also necessitates appropriate data sets for undertaking such an analysis. As insurers have become increasingly sophisticated with respect to their use of rating variables, they have been able to offer insurance in the voluntary market to more applicants. According to a report from the Insurance Information Institute and the Casualty Actuarial Society, "[i]n 2002, assigned risk pools insured 827,000 consumers in the 45 states that provided data to assigned-risk manager AIPSO. According to AIPSO, by 2017 that number decreased to only 88,000 consumers — a reduction of almost 90 percent."[3]

Insurance companies must use underwriting criteria that reflects the risks of the policies they are issuing so they can pay policyholder claims and maintain solvency. Insurance companies are in the business of managing risk and prohibiting use of data that makes that more difficult could jeopardize their ability to carry out their core competency. Requirements from state insurance regulators are already designed to protect consumers from unfair discrimination and excessive rates, and to help avoid

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[1] National Association of Insurance Commissioners. Issue Brief: Use of Insurance Credit Scores in Underwriting (May 2019), available at https://www.naic.org/documents/government_relations_190507_credit_based_scores.pdf

[2] Michael J. Miller and Richard A. Smith, "The Relationship of Credit-Based Insurance Scores to Private Passenger Automobile Insurance Loss Propensity: An Actuarial Study (June 2003). www.ask-epic.com/Publications/Relationship%20of%20 Credit%20Scores_062003.pdf

[3] Insurance Information Institute. Insurance Rating Variables: What They Are and Why They Matter (June 2019), available at https://www.iii.org/sites/default/files/docs/pdf/ratingvariables_cas-iii_wp072419.pdf

the insolvency of insurance firms. State insurance regulators are responsible for the administration of their respective insurance guarantee funds, which may be used to pay policyholder claims in the rare event of a firm's failure. Thus, it is vital to leave policymaking regarding the underwriting of insurance policies to state insurance regulators.

State-Based Regulation

The Chamber believes that the existing state-based regulatory system for underwriting insurance products is in the best interest of consumers and the financial markets. Broadly speaking, the state-based regulatory system permits for local regulators to account for different social and economic needs in their disparate markets, which may also include different risks. For example, the risk of damage to an automobile due to severe weather conditions will vary from state to state. This is just one of a myriad of differences that insurance companies and regulators must analyze when evaluating the effect of proposed rates on consumers and the insurance market as a whole.

Insurance companies must comply with the laws of every state in which it operates. States are empowered to regulate the rates charged for automobile insurance with the ostensible goal of achieving a competitive and vibrant marketplace that ultimately benefits consumers through the provision of a myriad of insurance products at affordable rates. In general, state regulators need to ensure that rates are not unfairly high, but they also need to ensure they are not too low (as discussed above). State law commonly requires that rates must not be excessive, inadequate, or unfairly discriminatory.

Insurance companies, and the policyholders and communities they serve, have been very successful under the existing regulatory system. Interfering with the risk criteria used by insurance companies could impede their ability to make investments that benefit all Americans because they may require extra reserves to account for reduced certainty in their ability to predict claims from policyholders.

Investment

Last year, the Chamber released a new report explaining how the insurance industry invests in the U.S. economy. Our report found that the insurance industry has invested approximately $6 trillion in assets that support job creation, strengthens economic infrastructure like roads and bridges, creates affordable housing, and builds

new schools.[4] These investments are directly correlated to the volume of insurance the industry issues to consumers and the characteristics of those policies.

Insurance companies are focused on investing in assets that can effectively pay for future liabilities. Therefore, their investment strategies are focused on four key criteria:

1. Duration matching. Assets need to match projected liabilities for insurance companies, which means investments are typically longer-term.

2. Low credit risk. Insurance investments are focused on managing credit risk so they will not be hindered to pay out future liabilities.

3. Diversification. A diverse portfolio should provide insurance companies a stable flow of cash in a wide variety of market conditions.

4. Optimize capital redeployment. Insurance companies strive to maximize returns in their investment portfolio while properly managing risk, including by holding appropriate risk-based capital. The riskier the assets, the more capital is required to be held in reserve to offset potential losses.

Insurers are a primary source of patient capital as a function of their business model which necessitates making low-risk investment that permits them to meet policyholder claims. Insurers are among those institutional investors who are interested in receiving a return over 20-year or longer time horizons. Their limited allocation to stocks and greater emphasis on fixed income instruments support their investment time horizon as they look to provide funding for long-term capital expenditure and infrastructure projects—projects that create sustainable and tangible economic benefits to the capital markets and to communities.

Thus, by deploying their patient capital accordingly, insurance companies help counteract any shift toward increased short-term thinking. Additionally, the long-term approach that insurance companies take can empower corporate leaders to make decisions that encourage investments on projects with long-term benefits, and support their financing.

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[4] U.S. Chamber of Commerce. The Role of Insurance Investments in the U.S. Economy (Winter 2019), available at https://www.centerforcapitalmarkets.com/wp-content/uploads/2019/03/CCMC_InsurancePaper_v2.pdf

Infrastructure

The insurance industry contributes directly to expanding and strengthening America's economic infrastructure. This activity is primarily realized through investment in municipal bonds, which are one of the primary vehicles for financing infrastructure. The insurance industry plays a vital role in this market through its ownership of approximately 20 percent of all outstanding municipal debt – or about $740 billion. This level of investment could help rebuild up to about 1% of the total mile network in the U.S. (4 million miles) every year.

Investments by the insurance industry also strengths the social infrastructure vital for creating strong communities such as schools and affordable housing. For example, our analysis found that U.S. insurance investments in education projects through municipal bond purchases could be estimated as building about 1,000 elementary schools every year, which would support around 620,000 students and close to 45,000 teachers. Alternatively, it could provide funding for 350 high schools holding around 350,000 students and 25,000 teachers. Investments like these made by the insurance industry ensure students are able to receive their education in safe, high-quality buildings. Similarly, insurers investments can help alleviate the housing shortage facing America.

Insurers' involvement in mortgage-backed securities (MBS) and commercial and multifamily real estate helps provide homes for families of all incomes and promotes stability in the housing market. In the agency mortgage-backed securities market, insurers participate in the Government National Mortgage Association (GNMA) space, where capital has supported Federal Housing Authority (FHA), Veterans Affairs (VA), and similar affordable loan programs. This is especially important as the need for affordable housing has become a growing concern in recent years.

Corporate Debt

The insurance industry directly finances job creation and economic growth. The Chamber's report finds that U.S. insurers hold approximately 21% of all outstanding corporate debt, or about $2.5 trillion. Corporate bonds allow companies to finance various forward-looking projects as they look to grow their business. This capital can be used to fund operating expenses, invest in new projects, or simply retire outstanding debt.

While insurers make up a small share (about 5%) of total transaction volume of the most-traded corporate bonds, insurance purchases make up a significantly higher percentage (about 22%) of the purchases of the least-traded bonds. By purchasing these less frequently traded bonds, insurers are able to provide liquidity to the bond market and ensure a healthy market for corporate bond trading. Additionally, the long-term approach that insurance companies take can empower corporate leaders to make decisions that encourage investments on projects with long-term benefits, and support their financing.

These investments are only possible because insurance companies use robust underwriting for auto insurance and other policies. Prohibiting the use of credit scores for underwriting automobile insurance will undoubtedly have knock-on effects in the financial markets and inhibit the important investments that are currently being made by the insurance industry.

We appreciate the Committee taking our views regarding the underwriting of automobile insurance under consideration is it seeks to understand if unfair discrimination is occurring in the provision of these products. We believe the existing state-based regulatory regime is in the best interest of consumers and financial markets. We stand ready to work with the Committee to ensure unfair discrimination is not present in the underwriting of automobile insurance or anywhere else in our financial system.

Drivers of Discrimination
An Examination of Unfair Premiums, Practices and Policies in the Auto Insurance Industry

Supplemental Materials from Eric S. Poe, Esq., CPA, and Chief Operating Officer of CURE Auto Insurance before the U.S. House of Representatives Committee on Financial Services, Subcommittee on Housing, Community Development, and Insurance, Hearing Date March 4, 2020.

STATE LAWS PROHIBITING DISCRIMINATION IN RATING AND PUBLIC ACCESS TO INSURER FILINGS ARE INADEQUATE

I thank the Subcommittee again for reviewing my written testimony and for inviting me to testify on March 4, 2020. As I explained at that time, despite state laws like the statute in New Jersey that requires that "[a]ll underwriting rules shall be subject to public inspection,"[1] the actuarial support justifying these rating factors continues to be shielded from public review. The attached supplementary materials address this issue.

In my written testimony, I provided a specific example from New Jersey where State Senator Nia H. Gill sought documents concerning the rating criteria used by automobile insurers pursuant to the Open Public Records Act (OPRA),[2] but whose request was denied [3] after the court concluded that the documents State Senator Gill requested were not "underwriting rules" and, therefore, not accessible to the public. In addition, the court held that they were not discoverable pursuant to OPRA in light of the statute's exemption from the turnover of government records that contain "'trade secrets and proprietary commercial or financial information'."[4]

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[1] N.J. Stat. Ann. § 17:29A-46.2b.
[2] N.J. Stat. Ann. § 47:1A–1 to –13.
[3] Gill v. New Jersey Dep't of Banking & Ins., No. A-1801-10T4, 2013 WL 534786, at *1 (N.J. Super. Ct. App. Div. Feb. 14, 2013).
[4] Gill v. New Jersey Dep't of Banking & Ins., No. A-1801-10T4, 2013 WL 534786, at *1 (N.J. Super. Ct. App. Div. Feb. 14, 2013).

The attached spreadsheet provides citations to state laws in virtually every state that both prohibit against "unfairly discriminatory" rates, and that stipulate that underwriting and rate filings are open to public disclosure.[5] Reading these statutory requirement in tandem, it appears that all insurance filings are open to public inspection in order to minimize the risk of discriminatory practices in rating and underwriting.

The issue? Virtually every state's "public inspection" law includes exceptions for information which is a "trade secret" or "of a proprietary nature." In our experience, these exceptions to public access have been used to shield the industry's use of these non-driving factors, such as educational obtainment and occupation, from disclosure.

By way of example, attached is GEICO's "Geico Auto Group Guide to Company Placement" (revision date of March 5, 2010), plainly indicating that GEICO prefers certain occupations and educational levels.[6]

Accountants, dentists, engineers, judges, lawyers, and teachers, are listed as occupations that "have exhibited superior loss experience in the past."[7]

The worst risks mentioned include clerks, long haul drivers, route men, and "unskilled and semi-skilled workers." (p. 4) Lowest ranking members of the military are also included in this "less preferred" group.[8]

As for education, "[r]isks who have achieved at least a high school diploma or its equivalent are more favorable than those without a high school education. Bachelors, masters and other advanced degrees are considered most favorable…"[9]

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[5] Supplemental Exhibit 1: Anti-Discrimination and Public Examination Statues and Regulations
[6] Supplemental Exhibit 2: Geico Auto Group Guide to Company Placement", (revision date of March 5, 2010)
[7] Id. at 4,7.
[8] Id. at 5,7.
[9] Id at 5, 8.

Such factors can make a huge difference in rates, but the justification for using such factors is shielded from public scrutiny. This is particularly concerning because these factors have no obvious correlation to driving risk.

Once again, I am asking that the federal government take action to ensure that individuals with less formal education or lower incomes are not unfairly penalized in the auto insurance marketplace. Simple, common-sense steps like requiring the full disclosure of all rating and underwriting methods, including any actuarial justification for their use, in order to improve the transparency of these practices to the public would be an enormous and fair leap forward.

At CURE Auto Insurance, we firmly believe in healthy competition in our marketplace; however, we simply do not believe in competing while using these discriminatory factors.

Respectfully,

Eric S. Poe, Esq., CPA
Chief Operating Officer
CURE Auto Insurance

Supplemental Exhibit 1

Drivers of Discrimination
An Examination of Unfair Premiums, Practices and Policies in the Auto Insurance Industry

Anti-Discrimination and Public Inspection Statutes and Regulations

State	Statute Concerning Rates That Are Excessive, Inadequate or Discriminatory	Citation	Statute Concerning Public Access or Inspection of Rating/Underwriting	Citation
Alabama	The purpose of this chapter is to promote the public welfare by regulating insurance rates to the end that they shall not be excessive, inadequate or unfairly discriminatory and to authorize and regulate cooperative action among insurers in rate-making and in other matters within the scope of this chapter.	Ala. Code 1975 § 27-13-1	(b) The records of the commissioner and insurance filings in his office shall be open to public inspection, except as otherwise provided by this title.	Ala. Code 1975 § 27-2-14
Alaska	(1) rates shall not be excessive, inadequate, or unfairly discriminatory;	AS § 21.39.030	The records and insurance filings in the office of the director are open to public inspection, except as otherwise provided in (b)--(g) of this section or other provisions of this title with respect to particular records or filings.	AS § 21.06.060
Arizona	A. An insurer shall not charge rates that are excessive, inadequate or unfairly discriminatory.	A.R.S. § 20-383	The director shall open to public inspection at any reasonable time each filing and supporting information filed pursuant to this article except information in a filing or supporting information that is a trade secret under title 44, chapter 4, article 1. The insurer or filer shall have the burden of asserting to the director that the information is a trade secret. A person may obtain copies of materials open to public inspection upon request and payment of a reasonable charge.	A.R.S. § 20-386

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Anti-Discrimination and Public Inspection Statutes and Regulations

State	Statute Concerning Rates That Are Excessive, Inadequate or Discriminatory	Citation	Statute Concerning Public Access or Inspection of Rating/Underwriting	Citation
Arkansas	(b)(1) The commissioner shall disapprove a premium rate filed with an individual accident and health contract if the commissioner finds that the rate is not actuarially sound, is excessive, is inadequate, or is unfairly discriminatory.	A.C.A. § 23-79-110	(b) Each filing and supporting nonproprietary information filed under this chapter shall, as soon as filed, be open to public inspection. Notwithstanding the provisions of the Freedom of Information Act of 1967, § 25-19-101 et seq., information which is a trade secret or of a proprietary nature, or both, shall not be open to public inspection.	A.C.A. § 23-67-212
California	(a) No rate shall be approved or remain in effect which is excessive, inadequate, unfairly discriminatory or otherwise in violation of this chapter. In considering whether a rate is excessive, inadequate or unfairly discriminatory, no consideration shall be given to the degree of competition and the commissioner shall consider whether the rate mathematically reflects the insurance company's investment income.	West's Ann. Cal. Ins. Code § 1861.05	All information provided to the commissioner pursuant to this article shall be available for public inspection, and the provisions of Section 6254(d) of the Government Code and Section 1857.9 of the Insurance Code shall not apply thereto.	West's Ann. Cal. Ins. Code § 1861.07
Colorado	(1) Rates shall not be excessive, inadequate, or unfairly discriminatory.	C.R.S.A. § 10-4-403	(3) A filing and any supporting information shall be open to public inspection at the division of insurance.	C.R.S.A. § 10-4-405

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Connecticut	(a) Rates shall not be excessive, inadequate or unfairly discriminatory.	C.G.S.A. § 38a-686	(5) All rates, supplementary rate information and any supporting information for risks filed under subsection (d) of section 7-479e, sections 38a-341, 38a-387, 38a-665, subsection (b) of section 38a-672, and sections 38a-673, 38a-675, 38a-676 and 38a-686 to 38a-694, inclusive, shall, as soon as filed, be open to public inspection at any reasonable time. Copies may be obtained by any person on request and upon payment of a reasonable charge.	C.G.S.A. § 38a-688
Delaware	The purpose of this chapter is to promote the public welfare by regulating insurance rates (in accordance with the intent of Congress as expressed in Public Law 15—79th Congress) and to the end that they shall not be excessive, inadequate or unfairly discriminatory and to authorize and regulate cooperative action among insurers in rate making and in other matters within the scope of this chapter.	18 Del. C. § 2501	(b) Except where the Commissioner deems the same to be prejudicial to the public interest, the Commissioner shall permit inspection of the papers, records and filings in the Department by persons found to have an identified and proper interest therein.	18 Del. C. § 314
			A filing and supporting information shall be open to inspection by parties in interest after the filing becomes effective.	18 Del.C. § 2504
Florida	(a) To promote the public welfare by regulating insurance rates as herein provided to the end that they shall not be excessive, inadequate, or unfairly discriminatory;	West's F.S.A. § 627.031	Medical Malpractice: (2) The rate filing shall be available for public inspection.	West's F.S.A. § 627.41495
			Workers' Compensation/Employee Liability: (3) A filing and any supporting information shall be open to public inspection as provided in s. 119.07(1).	West's F.S.A. § 627.091

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Drivers of Discrimination
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Anti-Discrimination and Public Inspection Statutes and Regulations

State	Statute Concerning Rates That Are Excessive, Inadequate or Discriminatory	Citation	Statute Concerning Public Access or Inspection of Rating/Underwriting	Citation
			Financial Guaranty Insurance: (4) All such filings must be available for public inspection at the office.	West's F.S.A. § 627.974
			Motor Vehicle Insurance: (b) The submission of rates, rating schedules, and rating manuals to the office by a licensed rating organization of which an insurer is a member or subscriber will be sufficient compliance with this subsection for any insurer maintaining membership or subscribership in such organization, to the extent that the insurer uses the rates, rating schedules, and rating manuals of such organization. All such information shall be available for public inspection, upon receipt by the office, during usual business hours.	West's F.S.A. § 627.0651
Georgia	(1) Rates shall not be excessive or inadequate, as defined in this Code section, nor shall they be unfairly discriminatory;	Ga. Code Ann., § 33-9-4	[Does not appear to have provision for public inspection related to rates or underwriting.]	
Hawaii	Health Insurance: (a) Rates shall not be excessive , inadequate, or unfairly discriminatory and shall be reasonable in relation to the costs of the benefits provided.	HRS § 431:14G-103	Health Insurance: Rates shall be open to public inspection upon filing with the commissioner; provided that the commissioner establishes rules to ensure that confidential and proprietary information is protected and shall not be subject to public inspection.	HRS § 431:14G-105

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Drivers of Discrimination
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Anti–Discrimination and Public Inspection Statutes and Regulations

State	Statute Concerning Rates That Are Excessive, Inadequate or Discriminatory	Citation	Statute Concerning Public Access or Inspection of Rating/Underwriting	Citation
	Casualty, Surety, Property, Marine and Transportation: (a) Rates shall be made in accordance with the following provisions: (1) Rates shall not be excessive, inadequate, or unfairly discriminatory.	HRS § 431:14-103	Casualty, Surety, Property, Marine and Transportation: (e) Except for rates filed in accordance with subsections (k), (l), and (m), a filing and any supporting information shall be open to public inspection upon filing with the commissioner.	HRS § 431:14-104
	Motorcycle/Motor Scooter: (1) Rates shall not be excessive, inadequate, or unfairly discriminatory;	HRS § 431:10G-201	Motorcycle/Motor Scooter: (d) A filing and any supporting information shall be open to the public upon filing with the commissioner.	HRS § 431:10G-202
	Motor Vehicle (Joint Underwriting Plan): (1) Rates shall not be excessive, inadequate or unfairly discriminatory.	HRS § 431:10C-409	Motor Vehicle (Joint Underwriting Plan): [Does not appear to have provision for public inspection related to rates or underwriting.]	

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Drivers of Discrimination
An Examination of Unfair Premiums, Practices and Policies in the Auto Insurance Industry

Anti-Discrimination and Public Inspection Statutes and Regulations

State	Statute Concerning Rates That Are Excessive, Inadequate or Discriminatory	Citation	Statute Concerning Public Access or Inspection of Rating/Underwriting	Citation
	Motor Vehicle: Except as expressly provided in this part, all premium rates for motor vehicle insurance shall comply with the provisions of the rating law contained in article 14.[1]	HRS § 431:10C-201	Motor Vehicle: (a) Upon the commissioner's request, all motor vehicle insurers shall provide motor vehicle insurance premium information to the commissioner within thirty days of the request. (b) The commissioner shall publish annually, by electronic or online publication on the official website of the insurance division, a list of all motor vehicle insurers with representative annual premiums for motor vehicle insurance. The commissioner shall have information on premiums for motor vehicle insurance, which shall be available to the public on request.	HRS § 431:10C-210
Idaho	Property Insurance: (1) Rates shall not be excessive, inadequate or unfairly discriminatory.	I.C. § 41-1405	(2) The records and insurance filings in the department shall be open to public inspection, except as otherwise provided by this code.	I.C. § 41-214

[1] This appears to also apply to the public inspection rules of Title 14.

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Drivers of Discrimination
An Examination of Unfair Premiums, Practices and Policies in the Auto Insurance Industry

Anti-Discrimination and Public Inspection Statutes and Regulations

State	Statute Concerning Rates That Are Excessive, Inadequate or Discriminatory	Citation	Statute Concerning Public Access or Inspection of Rating/Underwriting	Citation
Illinois	Workers' Compensation/Employee Liability: (d) Rates shall not be excessive, inadequate or unfairly discriminatory.	215 ILCS 5/456[2]	Workers' Compensation/Employee Liability: (3) A filing and any supporting information made pursuant to this Section shall be open to public inspection as soon as filed.	215 ILCS 5/457
	Medial Liability Insurance: (b)(1) Rates shall not be excessive or inadequate nor shall they be unfairly discriminatory.	215 ILCS 5/155.18[3]	Medical Liability Insurance: [Does not appear to have provision for public inspection related to rates or underwriting.]	
Indiana	(4) Rates shall not be excessive, inadequate, or unfairly discriminatory.	IC 27-1-22-3	(d) A deviation filing and supporting information shall be open to public inspection as soon as stamped "filed" within a reasonable time after receipt by the commissioner and copies may be had by any person on request and upon the payment of a reasonable charge therefor.	IC 27-1-22-9

[2] There does not appear to be any section concerning other types of insurance that has the same requirements that rates are not "excessive, inadequate or unfairly discriminatory."

[3] Held unconstitutional as not severable by Lebron v. Gottlieb Memorial Hospital, 237 Ill.2d 217 (2010).

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Drivers of Discrimination
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Anti–Discrimination and Public Inspection Statutes and Regulations

State	Statute Concerning Rates That Are Excessive, Inadequate or Discriminatory	Citation	Statute Concerning Public Access or Inspection of Rating/Underwriting	Citation
			(4) Except for information determined by the commissioner to be confidential under this subsection, the filing and supporting information that has not been returned to the filer under subdivision (3) shall be open to public inspection as soon as stamped "filed" within a reasonable time after receipt by the commissioner, and copies may be obtained by any person on request and upon payment of a reasonable charge therefor.	IC 27-1-22-4
Iowa	Casualty Insurance: 1. Rates shall not be excessive, inadequate, or unfairly discriminatory.	I.C.A. § 515F.4	Casualty Insurance: A filing and any supporting information shall be open to public inspection after the filing becomes effective.	I.C.A. § 515F.5
Kansas	Fire and Casualty Insurance: (a) Protect policyholders and the public against the adverse effects of excessive, inadequate or unfairly discriminatory rates;[4]	K.S.A. 40-951	[Does not appear to have provision for public inspection related to rates or underwriting.]	

[4] Applies only to fire and casualty insurance including fidelity, surety and guarantee bonds, on risks or operations, except reinsurance, accident and health insurance, insurance against loss of or damage to, or against liability arising out of the ownership, maintenance or use of any aircraft. K.S.A. 40-952

Supplemental Exhibit 1

Drivers of Discrimination
An Examination of Unfair Premiums, Practices and Policies in the Auto Insurance Industry

Anti-Discrimination and Public Inspection Statutes and Regulations

State	Statute Concerning Rates That Are Excessive, Inadequate or Discriminatory	Citation	Statute Concerning Public Access or Inspection of Rating/Underwriting	Citation
Kentucky	(1) In a noncompetitive market, rates shall be made in accordance with the following provisions: (b) Rates shall not be excessive, inadequate or unfairly discriminatory;	KRS § 304.13-031	(1) All rates, supplementary rate information, and supporting information filed under KRS 304.13-011 to 304.13-161 shall be open to public inspection at any reasonable time. Copies may be obtained by any person on request and on payment of a charge specified in Subtitle 4 of this chapter.	KRS § 304.13-081
Louisiana	Property and Casualty: A. The purpose of this Subpart is to promote the public welfare by regulating insurance rates to the end that they shall not be excessive, inadequate, or unfairly discriminatory and to authorize and regulate cooperative action among insurers in ratemaking and in other matters within the scope of this Subpart.	LSA-R.S. 22:1452	D. All rates, supplementary rate information, and any supporting information filed under this Subpart shall be open to public inspection upon expiration of the forty-five-day period as set forth in R.S. 22:1451(C)(1), or upon disapproval, except for information which is deemed confidential, trade secret, or proprietary by the insurer or filer.	LSA-R.S. 22:1464
Maine	B. Rates shall not be excessive, inadequate or unfairly discriminatory.	24-A M.R.S.A. § 2303	A filing and any other supporting information are open to public inspection after the filing becomes effective.	24-A M.R.S.A. § 2304-A
Maryland	(1) to promote the public welfare by regulating insurance rates so that they are not excessive, inadequate, or unfairly discriminatory;	MD Code, Insurance, § 11-201	(d) A filing and any supporting information shall be open to public inspection as soon as filed.	MD Code, Insurance, § 11-206
Massachusetts	Auto Insurance: (a) To promote the public welfare by regulating insurance rates so that they are not excessive, inadequate or unfairly discriminatory;	211 CMR 79.01	(5) Copy Available for Inspection. A copy of each Rate Filing or Advisory Filing shall be available for public inspection during normal business hours at the Division.	211 CMR 79.05

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Michigan	Automobile and Home Insurance: (a) Rates shall not be excessive, inadequate, or unfairly discriminatory.	M.C.L.A. 500.2109	(5) Except as otherwise provided in this subsection, the department shall make a filing under this section and any accompanying information open to public inspection on filing.	M.C.L.A. 500.2108
Minnesota	(a) to protect policyholders and the public against the adverse effects of excessive, inadequate or unfairly discriminatory rates;	M.S.A. § 70A.01	[Does not appear to have provision for public inspection related to rates or underwriting.][5]	
Mississippi	Property and Casualty: (a) Rates shall not be excessive, inadequate or unfairly discriminatory.	Miss. Code Ann. § 83-2-3	(1) All rates, supplementary rate information, policy forms, endorsements and any supporting information filed under this chapter shall be open to public inspection at any reasonable time as soon as filed. Copies may be obtained by any person on request and upon payment of a reasonable charge.	Miss. Code Ann. § 83-2-9
Missouri	Commercial casualty insurance rates shall not be excessive, inadequate or unfairly discriminatory.	V.A.M.S. 379.889	3. A deviation filing shall be open to public inspection as soon as stamped "filed" within1 a reasonable time after receipt by the director and copies may be had by any person on request and upon the payment of a reasonable charge therefor.	V.A.M.S. 379.326

[5] Prior law provided for public inspection of rate filings, but this law was repealed in 2009. M.S.A. § 70A.07; Repealed by Laws 2009, c. 178, art. 1, § 69, eff. Aug. 1, 2009

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State	Statute Concerning Rates That Are Excessive, Inadequate or Discriminatory	Citation	Statute Concerning Public Access or Inspection of Rating/Underwriting	Citation
Montana	(1) (a) Rates may not be excessive or inadequate, and they may not be unfairly discriminatory.	MCA 33-16-201	[Does not appear to have provision for public inspection related to rates or underwriting.]	
Nebraska	Property and Casualty: (2) To protect policyholders and the public against excessive rates and the adverse effects of inadequate or unfairly discriminatory rates;	Neb. Rev. St. § 44-7502	(8) No filing or any supporting information provided pursuant to this section shall be open to public inspection pursuant to sections 84-712 to 84-712.09 before the date on which the director completes review of the filing unless publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by the director pursuant to statute.	Neb. Rev. St. § 44-7508
Nevada	(a) Protect policyholders and the public against the adverse effects of excessive, inadequate or unfairly discriminatory rates;	N.R.S. 686B.010	1. Except as otherwise provided in subsections 2 to 5, inclusive, each filing and any supporting information filed under NRS 686B.010 to 686B.1799, inclusive, must, as soon as filed, be open to public inspection at any reasonable time. Copies may be obtained by any person on request and upon payment of a reasonable charge therefor.	N.R.S. 686B.080
New Hampshire	I. Rates shall not be excessive, inadequate, or unfairly discriminatory.	N.H. Rev. Stat. § 412:15	XI. A filing and any supporting information not considered proprietary pursuant to paragraph II shall be open to public inspection on or after the effective date.	N.H. Rev. Stat. § 412:16

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Anti-Discrimination and Public Inspection Statutes and Regulations

State	Statute Concerning Rates That Are Excessive, Inadequate or Discriminatory	Citation	Statute Concerning Public Access or Inspection of Rating/Underwriting	Citation
New Jersey	Every rating organization, and every insurer which makes its own rates, shall make rates that are not unreasonably high or inadequate for the safety and soundness of the insurer, and which do not unfairly discriminate between risks in this State involving essentially the same hazards and expense elements, and shall, in rate-making, and in making rating systems.	N.J.S.A. § 17:29A-4	All underwriting rules shall be subject to public inspection.	N.J.S.A. 17:29A-46.2
New Mexico	A. Rates shall not be excessive, inadequate or unfairly discriminatory, nor shall an insurer charge any rate that, if continued, will have or tend to have the effect of destroying competition or creating a monopoly.	N. M. S. A. 1978, § 59A-17-6	A filing and supporting information filed under Sections 59A-17-9 and 59A-17-10 NMSA 1978 shall, as soon as filed, be open to public inspection at a reasonable time.	N. M. S. A. 1978, § 59A-17-11
New York	Rates shall not be excessive, inadequate, unfairly discriminatory, destructive of competition or detrimental to the solvency of insurers.	N.Y. Ins. Law § 2303	After a rate filing becomes effective, the filing and supporting information shall be open to public inspection.	N.Y. Ins. Law § 2305
North Carolina	(1) Rates or loss costs shall not be excessive, inadequate or unfairly discriminatory.	N.C.G.S.A. § 58-36-10	(b) A filing by the Rate Bureau shall be open to public inspection immediately upon submission to the Commissioner.	N.C.G.S.A. § 58-36-15
North Dakota	The purpose of this chapter is to promote the public welfare by regulating insurance rates so that they are not excessive, inadequate, or unfairly discriminatory, and to authorize and regulate limited cooperative action among insurers in ratemaking-related activities and in other matters within the scope of this chapter.	NDCC, 26.1-25-01	A filing and any supporting information is open to public inspection after the filing becomes effective.	NDCC, 26.1-25-04

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State	Statute Concerning Rates That Are Excessive, Inadequate or Discriminatory	Citation	Statute Concerning Public Access or Inspection of Rating/Underwriting	Citation
Ohio	Sections 3937.01 to 3937.17, inclusive, of the Revised Code shall be liberally interpreted to the end that insurance rates shall not be excessive, inadequate, or unfairly discriminatory, and co-operative action among insurers in rate making and in other matters within the scope of such sections shall be authorized and regulated.	R.C. § 3937.17	A filing and any supporting information shall be open to public inspection after the filing becomes effective.	R.C. § 3937.03
Oklahoma	A. The Insurance Commissioner shall not approve rates for insurance which are excessive, inadequate, or unfairly discriminatory.	36 Okl. St. Ann. § 902	A. All schedules and insurance rates and supporting information filed in accordance with the provisions of this article shall be open to inspection to the public after such filings are made.	36 Okl. St. Ann. § 904
Oregon	(1) Rates shall not be excessive, inadequate or unfairly discriminatory.	O.R.S. § 737.310	(3) A filing shall be open to public inspection immediately upon submission to the director.	O.R.S. § 737.205
Pennsylvania	Rates shall not be excessive, inadequate or unfairly discriminatory.	40 P.S. § 1183	A filing and any supporting information shall be open to public inspection after the filing becomes effective.	40 P.S. § 1184
Rhode Island	(a) Requirements. Rates shall not be excessive, inadequate, or unfairly discriminatory.	Gen. Laws 1956, § 27-44-5	(f) Filings open to inspection. All rates, supplementary rate information, and any supporting information for rates filed under this act shall, as soon as filed, be open to public inspection at any reasonable time. Copies may be obtained by any person on request and upon payment of a reasonable charge.	Gen. Laws 1956, § 27-44-6

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State	Statute Concerning Rates That Are Excessive, Inadequate or Discriminatory	Citation	Statute Concerning Public Access or Inspection of Rating/Underwriting	Citation
South Carolina	(1) promote the public welfare by regulating insurance rates to the end that they may not be excessive, inadequate, or unfairly discriminatory and to authorize and regulate cooperative action among insurers in rate making and in other matters within the scope of this chapter;	Code 1976 § 38-73-10	A filing and any supporting information are open to public inspection after the filing becomes effective.	Code 1976 § 38-73-940
South Dakota	Rates shall not be excessive, inadequate, or unfairly discriminatory.	SDCL § 58-24-5	A filing and any supporting information shall be open to public inspection after the filing becomes effective.	SDCL § 58-24-14
Tennessee	(a) GENERAL. Rates: (1) Shall not be excessive, inadequate or unfairly discriminatory;	T. C. A. § 56-5-103	All rates, supplementary rate information, policy forms, endorsements, and any supporting information filed under this part shall, as soon as filed, be open to public inspection at any reasonable time, except any information that is a trade secret under the Uniform Trade Secrets Act, compiled in title 47, chapter 25, part 17, as determined by the commissioner in the commissioner's sole discretion.	T. C. A. § 56-5-107
Texas	(1) promote the public welfare by regulating insurance rates to prohibit excessive, inadequate, or unfairly discriminatory rates;	V.T.C.A., Insurance Code § 2251.001	(a) Each filing made, and any supporting information filed, under this chapter is public information subject to Chapter 552, Government Code, including any applicable exception from required disclosure under that chapter.	V.T.C.A., Insurance Code § 2251.107

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State	Statute Concerning Rates That Are Excessive, Inadequate or Discriminatory	Citation	Statute Concerning Public Access or Inspection of Rating/Underwriting	Citation
Utah	(1) Rates may not be excessive, inadequate, or unfairly discriminatory.	U.C.A. 1953 § 31A-19a-201	(1) Rates and supplementary rate information filed under this chapter shall be open to public inspection at any reasonable time.	U.C.A. 1953 § 31A-19a-204
Vermont	(2) to protect policyholders and the public against the adverse effects of excessive, inadequate or unfairly discriminatory rates;	8 V.S.A. § 4681	All rates, supplementary rate information, and any supporting information for risks filed under this chapter shall, as soon as filed or after approval for those matters subject to prefiling, be open to public inspection at any reasonable time.	8 V.S.A. § 4688
Virginia	A. Rates for the classes of insurance to which this chapter applies shall not be excessive, inadequate, or unfairly discriminatory.	VA Code Ann. § 38.2-1904	Each filing and all supplementary rate information filed under this chapter, other than information contained therein or filed therewith that constitutes a trade secret, as defined in § 59.1-336, shall be open to public inspection.	VA Code Ann. § 38.2-1907
Washington	Premium rates for insurance shall not be excessive, inadequate, or unfairly discriminatory.	West's RCWA 48.19.020	However, the filing and all supporting information accompanying it shall be open to public inspection only after the filing becomes effective, except as provided in (b) of this subsection.[6]	West's RCWA 48.19.040

[6] Certain rate filings are exempt from public inspection, including "(b) For the purpose of this section, 'usage-based insurance' means private passenger automobile coverage that uses data gathered from any recording device as defined in RCW 46.35.010, or a system, or business method that records and preserves data arising from the actual usage of a motor vehicle to determine rates or premiums. Information in a filing of usage-based insurance about the usage-based component of the rate is confidential and must be withheld from **public inspection**." West's RCWA 48.19.040(5)(b).

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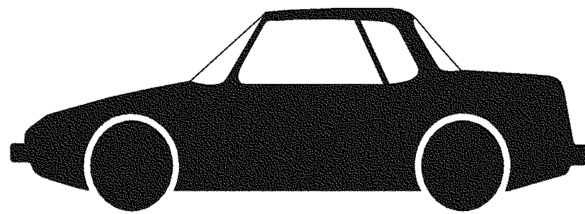
State	Statute Concerning Rates That Are Excessive, Inadequate or Discriminatory	Citation	Statute Concerning Public Access or Inspection of Rating/Underwriting	Citation
West Virginia	The purpose of this article is to promote the public welfare by regulating insurance rates to the end that they shall not be excessive, inadequate or unfairly discriminatory, and to authorize and regulate cooperative action among insurers in rate making and in other matters within the scope of this article.	W. Va. Code, § 33-20-1	A filing and any supporting information is open to public inspection as soon as the filing is received by the commissioner.	W. Va. Code, § 33-20-4
Wisconsin	(a) To protect policyholders and the public against the adverse effects of excessive, inadequate or unfairly discriminatory rates;	W.S.A. 625.01	Each filing and any supporting information filed under this chapter shall, as soon as filed, be open to public inspection at any reasonable time.	W.S.A. 625.14
Wyoming	The purpose of this chapter is to protect the public and policyholders against the effects of excessive, inadequate or unfairly discriminatory rates by promoting price competition among insurers.	W.S.1977 § 26-14-101	(c) All information provided to the insurance commissioner under this chapter shall be open to public inspection.	W.S.1977 § 26-14-107

NEW JERSEY
GEICO AUTOMOBILE GROUP GUIDE
TO
COMPANY PLACEMENT



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GEICO AUTO NEW JERSEY GUIDE TO COMPANY PLACEMENT

Section — Revised: 03/05/10

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GEICO AUTO NEW JERSEY GUIDE TO COMPANY PLACEMENT

Section	Revised: 03/05/10
Introduction	

The name GEICO, when used in this guide, applies to Government Employees Insurance Company. Currently, no new business is being written in GEICO General or GEICO Casualty. Both government and nongovernment employees can be written in Government Employees Insurance Company.

Differences exist in the Companies' standards, and these differences should not be overlooked. When placing applicants among the companies, use sound judgment. If an applicant is acceptable for a particular company, but the only principal operator on the policy is not acceptable, the risk should be offered coverage with the company for which the principal operator is acceptable.

The guidelines contained in this document form the basis for your placement decisions.

It is essential to maintain each company's homogeneity of risks by the proper placement of business. Risks better matched with GEICO Indemnity's rates should not be written in GEICO, and risks that meet GEICO's acceptability standards should not be written in GEICO Indemnity.

Those persons who are not acceptable for placement in the GEICO companies may find coverage elsewhere or be placed in the New Jersey Personal Automobile Insurance Plan (PAIP).

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LEGAL EXCEPTIONS

No insurance producer shall refuse to take an application from an applicant for any reason based in whole or in part upon the race, color, creed, religion, sex or physical impairments of an applicant, or for any arbitrary, capricious, or unfairly discriminatory reason, or for any reason which is contrary to federal or state law.

Parties to a civil union have all the same benefits, protections and responsibilities under law as are granted to spouses in a marriage, which is defined as the union of one man and one woman. Wherever the terms marriage, spouse, family, immediate family, dependent, next of kin, or any other term that denotes the spousal relationship is used or defined, a party to a civil union will be included.

No rule shall be based on whether the insured has changed employment in the recent past.

No rule shall be based on whether the insured or a member of the insured's household purchases or continues to purchase other insurance or services from the insurer or its affiliates, agents or other companies under common management or ownership.

An insurer may not discriminate on the basis that an applicant is or may be a victim of domestic violence, employs a person who is or may be a victim of domestic violence, or operates a domestic violence shelter. The prohibited practices are:

- Denying, refusing to issue or renew, canceling or terminating an insurance policy;
- Restricting, excluding or limiting benefits, denying a covered claim by an insured as a result of domestic violence;
- Failing to pay claims arising out of abuse or using other exclusions or limitations on coverage which unreasonably restrict the ability of a victim of domestic violence to be indemnified for the loss; or
- Adding a premium differential to the insurance policy.

No rule shall be based on whether the applicant was previously insured by a residual market mechanism, or whether another insurer declined to insure or terminated insurance.

RULE PROHIBITIONS

The Rule standards must meet the following standards:

1. An rule standard shall be based on specific and verifiable standards. No rule shall be based on subjective judgments such as "pride of ownership evident," "poor attitude," "unsatisfactory environment to conduct business," etc.
2. No rule standard shall be based on race, color, creed, national origin or ancestry.
3. No rule standard shall be based on whether the insured is impaired by physical or mental disabilities except those disabilities that impair the ability to operate an automobile safely.

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TIER STANDARDS

No rule shall be based on race, color, creed, religion, national origin or ancestry.

No risk may be placed in a higher than standard tier solely for the accumulation of four or fewer motor vehicle violation points by the named insured or a regular operator.

No rule shall be based on the territory in which an insured resides.

No rule shall be based on subjective judgments such as "pride of ownership evident," "poor attitude," "unsatisfactory environment to conduct business," etc.

No rule shall be based on the previous coverage of an insured or applicant by a substandard insurer in such a way as to rely on the application of the previous insurer's rule standard.

An applicant cannot be placed in a higher than standard tier due to a drug or alcohol related conviction or suspension occurring more than 5 years ago.

BASIC AUTOMOBILE INSURANCE POLICY

When an applicant requests a Basic Automobile Insurance Policy, the Company will not use credit as a factor. An applicant for the Basic Policy who qualifies for GEICO or GEICO Indemnity will be written in GEICO Indemnity Tier 9. Applicants qualifying for GEICO Casualty will be written in GEICO Casualty Tier 9.

GENERAL STANDARDS

An insurer with more than one rating plan for policies providing identical coverages shall not adopt rules which would permit a person to be insured under more than one rating plan.

There shall be no rate differential for a single speeding violation of less than 15 miles per hour by a driver on the application.

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Group 1

Group 1 occupations have exhibited superior loss experience in the past. Generally these occupations require a bachelor's degree, and some applicants will have advanced degrees. Occupations in this group include accountants (**Note**: several states *do not* require CPA's to have bachelor's degrees), administrators, architects, commercial writers, graphic or technical designers, dentists, editors, engineers, judges, lawyers, navigators, pharmacists, pilots and professional Federal employees in an administrative or technical position.

Group 2

Group 2 occupations usually require a bachelor's degree; some applicants will have advanced degrees. Typical occupations are physicians, actuaries, dietitians, teachers, veterinarians and college educated sales representatives with a high degree of technical knowledge in fields such as airplanes or computers, etc.

Group 3

Group 3 occupations usually require at least a high school diploma, but usually less than a bachelor's degree, nonclerical in nature, and involve problem solving and/or decision making and the use of judgement. Typically, they are technicians with vocational training or an associate's degree, wholesale nonspecialized sales representatives, supervisors and managers of clerical staffs, farmers, policemen, firemen and those administrators or professional and technical personnel not in Groups 1 and 2.

Group 4

Group 4 occupations usually require a high school diploma. Some may require vocational training or even 2 years of college. Typical occupations are clerical positions using special knowledge or exercising judgment/decision making responsibilities, technicians with on-the-job training, sales representatives not included in Groups 2 and 3, higher skilled artisans, opticians, plumbers, office machine operators such as duplicating machine operators and foremen.

Group 5

Group 5 occupations include minimally-skilled clerks, assistants, bartenders and bouncers. Also included are long haul drivers, route men, unskilled and semiskilled workers.

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SPECIAL PROFILES

Group 7

Students

This group is comprised of full-time high school and college students, including undergraduate and graduate students and student professional nurses, as well as to those college students who have graduated within the past three months and are either unemployed or employed in Group 4 or 5 occupations while continuing to look for work in their field, or more appropriate to their level of education. Part-time students (less than 12 semester hours or 9 trimester or quarter hours) should be evaluated against the applicable occupational group profile.

Group 8

Military

This group includes all active and retired military applicants. Reservists and National Guard applicants must be employed in these positions full time for this occupational group.

GROUPING FOR MARRIED APPLICANTS

The applicable occupational group for married applicants is determined by the occupation of the principal operator. When an application is submitted by a spouse who is not the principal operator, it is essential to obtain supplemental driving information for the principal operator.

When both spouses are principal operators (multi-car cases) or have equal use (single car cases), apply the criteria for the more preferred group.

If either spouse is enlisted military and a driver, use the Group 8 criteria.

RETIRED CIVILIAN APPLICANTS

Disregard any current occupation and evaluate against the previous occupation's profile.

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GEICO AUTO NEW JERSEY GUIDE TO COMPANY PLACEMENT

Section Revised: 03/05/10

Risk Characteristics

This guide contains criteria for placement among our companies. The factors relating to loss exposure may usually be viewed as favorable, unfavorable or of no significance. All of the factors should be considered in evaluating the placement of a risk in the companies. However, all the factors should not receive equal consideration.

The factors listed below are considered in evaluating which company to offer and discussed in terms of what is favorable and what is not. The factors are grouped into 3 categories (driving record, drivers and vehicles) and are listed below:

A. Driving Record:

1. **Accidents** (The loss damage must exceed a $1,000 threshold for the accident to be considered.)

   a. Evaluate how many accidents the drivers have had in the past 5 years. The more accidents present, the more unfavorable the risk is viewed and consideration should be given to placement in GI or GC. If there is more than one accident, view the risk more favorably if the accidents are spread among the drivers, rather than one driver having multiple accidents.
   b. Consider when the accidents occurred. Recent accidents (including not at fault) are considered more unfavorably than accidents more than a year old.
   c. **Multiple** not at fault accidents are considered an unfavorable factor.

2. **Theft/vandalism incidents** (The loss amount for Comprehensive must exceed a $1,000 threshold for consideration.)

   Multiple theft/vandalism incidents are considered unfavorable. Recent incidents are considered more unfavorably than incidents over a year old.

3. **Convictions**

   a. Evaluate how many convictions the drivers have had in the past 5 years and who had them.
   b. Consider the seriousness of the conviction. Of particular concern are convictions for greatly exceeding the speed limit*, reckless driving and convictions involving drink or drugs . These present greater exposure and should be viewed more unfavorably when evaluating a risk. Risks with more than one serious conviction (drink/drugs, hit and run, racing, felony, vehicular manslaughter/assault) are not written.
   c. Consider when the convictions occurred. More recent convictions should be looked upon as more unfavorable than convictions over a year old.

   *** No consideration is given to a single speeding violation of less than 15 miles per hour by a driver on the application.**

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4. License Suspension or Revocation

Risks reporting license suspensions should be questioned regarding the cause and duration of the suspension.

If a decision is made to write a policy for a driver who does not currently have a valid license, the risk can be placed in the recommended company with documentation and follow up to obtain proof of license reinstatement.

See page 13 for additional information on evaluating accidents, convictions and other occurrences, and the circumstances surrounding them.

B. Drivers:

1. **Driver Age/Usage-**The most favorable risk is one where the oldest driver on the policy is less than 70 years old.

2. **Occupation Group -** The more favorable occupations are Groups 1, 2, 7 (graduate students), and 8 (E-6's and higher). The remaining groups are less preferred, with the least favorable being Group 5's, and the lower ranking Group 8's. See page 4 for an explanation of occupational groups.

3. **Number of Drivers & Marital Status -** One driver who is an unmarried male, two drivers who are married, and three drivers who include a married couple are considered most favorable. Other combinations are considered less favorable.

4. **Driving Experience** - The more experienced driver is preferred over the newer driver. A driver with at least seven years driving experience should be considered experienced. In reviewing drivers with less than seven years experience, we are most concerned about older drivers since young drivers have higher rates to compensate for their inexperience. Newly licensed drivers over 75 years old are unacceptable in all companies. When evaluating driving experience, count only experience obtained in the United States or Canada.

5. **Current Insurance** -The most favorable applicant is one who is shopping for coverage in advance of his or her insurance policy's expiration date. Also favorable are applicants that were previously covered under their parents' policy. Risks with no prior insurance or a lapse of 31 or more days are least favorable. Applicants who are insuring their first auto, had no need for insurance or had a short lapse fall in between the two groups mentioned above.

6. **Current BI Limits –** Applicants with large BI limits (300/300 or higher) are considered most favorable and applicants with lower limits (less than 50/100) are least favorable.

7. **Years with Current Insurer -** Longer tenure with current insurer is more favorable than shorter tenure (less than 5 years).

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8. **Education** - Risks who have achieved at least a high school diploma or its equivalent are more favorable than those without a high school education. Bachelors, Masters, and other advanced degrees are considered most favorable. Level of education is not a factor for risks in Occupation Groups 7 and 8.

9. **Physical Impairments -** No rule shall be based on whether the insured is impaired by physical or mental disabilities except those disabilities that impair the ability to operate an automobile safely. See page 24 for Physical Impairment Guide.

10. **Credit History** - Risks whose credit history does not contain adverse information are more favorable than those whose credit history contains such information.

@ 11. **Source of Business -** Applicants that come to us via the Internet are considered slightly more favorable than those that come through other business sources.

C. Vehicles

1. **Number of Vehicles** - In general, more is better. Three or more vehicles are most preferred.

2. **Number of Drivers & Number of Vehicles -** The most favorable risks are married applicants requesting insurance for multiple drivers, regardless of the number of vehicles. Also favorable are single male applicants who are the sole operators of one or more vehicles. Less favorable risks include one driver cases with one or more vehicles, except single males, and unmarried applicants requesting insurance for multiple drivers when the number of vehicles is less than the number of drivers. In general, unmarried applicants requesting insurance on multiple drivers when the number of vehicles is equal to or greater than the number of drivers are neutral except for cases that include a very young operator.

3. **Type of Vehicle** - See page 14 for information on vehicles and vehicle types that are of concern.

4. **Usage** - Applicants using a vehicle for pizza or similar delivery are not written. Wholesale and retail delivery is not written. Also see page 11 for information on vehicles used for business.

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GEICO AUTO NEW JERSEY GUIDE TO COMPANY PLACEMENT

Section Revised: 03/05/10

Additional Placement Guidelines

Additional Placement Guidelines for GEICO Indemnity - Risks containing the following characteristics should not be placed in GEICO Indemnity:

Driving Record:

a) Applications containing more than one of any of the convictions listed below in the last 5 years, in any combination:
   - i. vehicular homicide.
   - ii. felony involving the use or theft of a motor vehicle.
   - iii. leaving the scene (hit and run).
   - iv. racing, speed contest or exhibition of speed.
   - v. fleeing or attempting to elude police.
   - vi. alcohol or drug related convictions. (Also see b, which follows)

b) Applications containing two or more drug or alcohol related convictions in the past 5 years.

c) Applications accumulating 6 or more flags as outlined below:
   - i. 2 flags if the named insured has been licensed less than 2 years.
   - ii. 2 flags if the named insured does not have current insurance. Applicants who have been deployed or overseas, or driving a company car gets 0 flags.
   - iii. 1 flag for 3 caused occurrences. A caused occurrence is defined as an at-fault accident $1000 or more, conviction, or suspension in 5 years.
   - iv. 2 flags for 4+ caused occurrences in 5 years.
   - v. 2 flags for 3+ not caused occurrences. These include not-at-fault accidents or theft/vandalism claims of $1000 or more.

Additional Placement Guidelines for GEICO Casualty - While some variations do exist, there are some characteristics that are not acceptable for GC and these are listed below:

1. Driving Record:

   a) Applications containing more than one of any of the convictions listed below in the last 5 years, in any combination:
      - i) vehicular homicide
      - ii) felony involving the use or theft of a motor vehicle
      - iii) leaving the scene (hit and run)
      - iv) racing, speed contest or exhibition of speed
      - v) fleeing or attempting to elude police
      - vi) alcohol or drug related convictions (also see b, which follows);

   b) Applications containing two or more drug or alcohol related convictions in the past 5 years.

   c) Applications accumulating 6 or more flags as outlined below:
      - i) 2 flags if the named insured has been licensed less than 2 years.
      - ii) 2 flags if the named insured does not have current insurance. Applicants who have been deployed or overseas, or driving a company car gets 0 flags.
      - iii) 1 flag for 3 caused occurrences. A caused occurrence is defined as an at-fault accident $1000 or more, conviction, or suspension in 5 years.
      - iv) 2 flags for 4+ caused occurrences in 5 years.
      - v) 2 flags for 3+ not caused occurrences. These include not-at-fault accidents or theft/vandalism claims of $1000 or more.

2. Age:

   Principal operators under age 16

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Additional Placement Guidelines for GEICO Casualty – continued

3. Vehicles:
   a) load capacities greater than one ton
   b) motor homes, snowmobiles, golf carts and other miscellaneous vehicles
   c) cost new in excess of $65,000

4. Registered State or Location

   Vehicles registered in MI, NC, VT or WV, unless the vehicle will be re-registered within 30 days. The policy must be controlled for 30 days for confirmation of re-registration.

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Driving Experience/Ownership

Driving experience and/or ownership requirements can be met only with driving experience and/or ownership in the United States or Canada. Exceptions can be made for those dependents of U.S. military personnel who have been driving overseas with licenses issued by the U.S. military (e.g., USAEUR/AFI).

Ownership

The applicant(s) should be the owner or co-owner of all vehicles to be insured. If the sole owner of the vehicle is a spouse, fiancé, child, sibling, parent or grandparent of the applicant and the vehicle is furnished for the regular use of the applicant only we will allow the policy to be written. Also, if the applicant has taken over the payments on a vehicle from the sole owner and the applicant is the sole driver of the vehicle we will allow the policy to be written. The sole owner and finance company must be listed as a lienholder on the policy.

If there are two unrelated individuals residing together in a long-term, committed relationship*, the policy may be written provided at least one vehicle to be insured is co-owned by these two individuals. Note: The policy system will only store one person as the named insured in the system. Another person can be stored as the secondary insured and as co-insured. With proper formatting both can be shown as named insureds on the policy declarations sheet.

If there is only one applicant and the vehicle is co-owned, that person should co-own the vehicle with a relative or a household resident. Carefully consider any other forms of ownership before insuring. Corporation owned or leased vehicles, used in business, are only written when there is an off-set in the rating structure for them.

* You may use the following definition of *domestic partners* as a standard:
Domestic partners are two adults, not related by blood, who have resided together continuously for at least six months and who intend to reside together on a permanent basis. These individuals must be mutually responsible for their common welfare, and cannot maintain any other domestic partnership or marriage.

Business Use

If the annual mileage is over 20,000 miles, find out how the mileage is being acquired. An applicant who uses his car in business, with an average mileage over 20,000, may be acceptable since the higher business rate absorbs some of this added exposure.

Vehicles used for wholesale or retail deliveries, including pizza or other food deliveries, are unacceptable.

Vehicles used for rural mail delivery by federal government employees and covered under the Federal Tort Claims Act while used for mail deliveries are acceptable in all companies provided all other acceptability standards are met. Vehicles not covered by the federal government might be acceptable as accommodation business in GEICO and GEICO Indemnity provided driving records are superior. They are not acceptable in GEICO Casualty.

Rural mail carriers, such as HRC (Highway Contract Route) are primarily independent contractors that are not covered under the Federal Tort Claims Act. Rural route carriers with designations of TRC (Temporary Relief Carrier) and RCA (Rural Carrier Associates) are covered under the Federal Tort Claims Act.
See **Truck** section (page 15) for additional information.

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GEICO AUTO NEW JERSEY GUIDE TO COMPANY PLACEMENT

Section Revised: 03/05/10

Additional Placement Guidelines

NAMED EXCLUDED DRIVER

In New Jersey, the Named Excluded Driver endorsement applies only to physical damage coverages on specified automobiles. It does not apply to any remaining coverages on the policy. The named excluded driver may not be rated on the physical damage coverages of the specified automobiles, but may be rated on the remaining coverages. The Named Excluded Driver endorsement shall be made available to the insureds who request it. The endorsement should not be made effective until the named insured signs and returns the exclusion form. **The Named Driver endorsement should not be used in lieu of cancellation or nonrenewal.**

The Named Excluded Driver endorsement will continue in force for the specified automobile(s) on subsequent renewal or replacement policies unless:

1. The specified automobile(s) is removed from the policy;
2. A new automobile replaces the specified automobile(s) on the policy; or
3. The insurer or its authorized representative receives a written request signed by a named insured electing to discontinue the endorsement.

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Occurrences

An occurrence is defined as an accident, conviction for a traffic violation, suspension, theft or vandalism loss.

The accidents and convictions referred to are **minor** accidents and convictions. **Minor** accidents are defined as those not involving risk taking or irresponsible driving behavior. **Minor** convictions include stop signs, stop lights, failure to yield, failure to give full time and attention and speeding convictions not classified below as major.

The following speeding convictions are considered major:

- 30 miles per hour over the limit
- 85 miles per hour or greater regardless of the posted limit.

Examples of gross negligent accidents include:

1. Hit and run
2. Loss of control at a high rate of speed
3. Driving under the influence of alcohol or narcotics
4. Collision at high speed
5. Manslaughter

Non-negligent loss activity should always be included in the evaluation of the risk. These losses, particularly if they occur frequently, can offer clues to deterioration in driving ability and attitude.

Certificates of Financial Responsibility (SR22)

New Jersey does not have financial responsibility laws or filing requirements. Therefore, the certificate of financial responsibility (SR-22) form is not used.

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TYPE OF AUTO

- Vehicles used for exhibition or other competitive events including racing are unacceptable to all companies.
- All-terrain vehicles (ATV's) are unacceptable to all companies.
  Note: ATV coverage may be available with GEICO Motorcycle. Screen for required insurability conditions and check for state coverage availability prior to referring the customer.
- Vehicles used for emergency and public livery are unacceptable for all companies.
- Motor homes valued at more than $100,000 are unacceptable to all companies. They should be referred to Insurance Counselors, Inc. (ICI).

  GEICO Casualty will also not insure the following types of vehicles: replicas, limited production, antiques, motor homes, snow mobiles, golf carts, kit cars, home built cars or custom cars (including fiberglass), other miscellaneous vehicles and alternatively powered vehicles.

LIABILITY ONLY VEHICLES

Certain vehicles should only be offered **liability coverages**:

1. Gray market vehicles modified to meet U.S. standards may be offered **liability only** in all companies. The applicant should provide proof of compliance.
2. Kit cars and replicas. Furthermore, these should only be written as supporting business (i.e., other vehicles must also be insured). They are not written at all in GC.

ALTERNATIVELY POWERED VEHICLES

To be considered for GEICO and GEICO Indemnity, vehicles using alternative sources of fuel should be converted by a qualified mechanic. We should not insure vehicles converted with do-it-yourself kits unless the work has been supervised or inspected by a professional in the field. These vehicles are not acceptable for GEICO Casualty.

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TRUCKS

When considering trucks we need to consider the use of the vehicle and the vehicle type. We should obtain complete information on the vehicle via completion of a Specialty Vehicle Questionnaire.

Commercial vehicle coverage is not written. The GEICO Companies do not offer coverage for commercial trucks or miscellaneous type vehicles.

Renting

Vehicles rented to others should be declined.

Other Uses

We do not offer coverage in any company for commercial trucks, nor do we insure vehicles used to plow snow (other than on the owner's private property). Vehicles used for wholesale or retail deliveries are unacceptable. Most pickups and vans used in business by artisans can be rated under private passenger rating.

Operators

If there are unrelated operators of a truck used in business or for business purposes, MVRs must be obtained prior to binding. Unrelated drivers may have no accidents or convictions for the past 5 years and must be licensed for 5 years.

Vehicle Type

Trucks with a load capacity of more than 2,000 pounds should be declined. Motor homes, pickups with campers and chassis-mounted campers are acceptable vehicles for GEICO and GEICO Indemnity. We do not insure buses or step vans that have been converted into motor homes.

Special Equipment/Features Which Are Not Insured By Us

- Winches and other equipment indicating that the vehicle is used for off-the-road purposes.
- Vehicles with modified suspensions and/or oversized tires which add significant height to the vehicle (more than six inches).
- Equipment mounted in or on the vehicle indicates business/commercial use. Examples include welding equipment or tanks.

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CUSTOMIZED VEHICLES

Applicants should be questioned for possible customizations to the vehicles. In any case where the customer reports customizations, obtain a complete listing and costs of the customizations. The cost of the customizations is needed to determine acceptability and the appropriate premium. Usually, minor customizations to wheels, stereo, etc., are not a problem. Expensive modifications, where the cost of the customizations becomes a significant portion of a vehicle's value, should generally be declined.

Custom features that are generally unacceptable include:

- **Modified engines**. Engine modifications such as nonfactory installed turbocharger, spoilers, special exhaust systems or any mention of engine modification.
- **Exterior paint**. Vehicles with nonfactory paint jobs, especially trick paint or murals are of concern. Moderate pin striping is acceptable.
- **High or low riders**. Vehicles whose suspension has been raised or lowered by more than six inches from the standard for that model.

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PHYSICAL DAMAGE COVERAGES

Requests for only Comprehensive and/or Collision on motor vehicles are not acceptable, since liability coverages are a prerequisite for offering physical damage coverages. Exceptions may be in order for a vehicle is storage for a short period of time. Comprehensive coverage without Collision coverage is unacceptable for GEICO Casualty, unless the vehicle is in storage.

Emergency Road Service (ERS) Coverage

- **Single Car Policies** - ERS FULL coverage is offered and written for vehicles with Comprehensive and/or Collision coverages.
- **Multi-Car Policies** - ERS FULL coverage is offered and written for vehicles with Comprehensive and/or Collision coverages.

  - ERS LIAB is not available at the sales stage. See exception below.

Exception: If you have a NBUS customer who is insuring at least one vehicle that carries Comprehensive and Collision and the customer requests ERS on a liability only vehicle, you may allow ERS LIAB.

- ERS LIAB at the service stage is available only if at least one other vehicle carries Comprehensive or Collision coverage.

Notes:

1. If a customer is adding a vehicle with liability only and wants to carry ERS LIAB then you may allow ERS LIAB.
2. Replacement *vehicles*, regardless of company, may have ERS without physical damage coverages if the vehicle being replaced had ERS coverage without physical damage coverages. No supervisory approval is required for these situations.
3. We will not reissue ERS FULL if the customer does not have the required physical damage coverages.
4. If an existing customer drops physical damage coverage (Comprehensive, Collision, or both) and wants to keep ERS, we will allow the customer to do so.
5. If the customer has ERS coverage on a liability only vehicle, he or she may keep it in a move-up situation, without approval. It must be the ERS LIAB version of ERS. If the customer had ERS before or ERS FULL, change to ERS LIAB version at the time of the move-up.
6. Do not offer or write ERS coverage for "Duallies" (pick-up trucks with four wheels on the rear axle) or motorhomes. There are no exceptions.

Mechanical Breakdown Insurance (MBI)

MBI coverage is not written for *standard* electric vehicles or Daewoo vehicles. The coverage can be written for the *hybrid* electric vehicles.

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Vanpools

GEICO covers vanpools. All vanpools are to be declined in GEICO Indemnity and GEICO Casualty.

Commercial vanpools and for profit arrangements are not written.

DECLINE any requests to insure vanpools which are co-owned by a nonrelative, or are owned and operated by a corporation or club (profit or non profit).

Decline any risks:

a. making more than one trip to and from work per day,
b. picking up or depositing passengers far from home or work, or
c. who own the van but do not ride in it.

Because of the exposure involved and the potential for severe losses, vanpools must be underwritten carefully. These guides apply to the person who is a registered owner of the van, drives it himself with 1 or 2 back-up drivers, and is responsible for maintenance of the vehicle. Be sure the vehicle is eligible for the family contract. All drivers of the van must be acceptable for the risk to be acceptable.

1. All drivers of the van, when it is carrying passengers, must be at least 25 years old, and not over 60, with at least 5 years driving experience.

2. Drivers must be in excellent physical condition. Reject any driver who is not clearly GEICO acceptable according to the physical impairments guides. Reject all drivers with conditions which may result in loss of consciousness (seizures, heart disease, diabetes).

3. Accidents: The preferred van pool risk has no accidents. One non-negligent accident per driver in the past 5 years may be acceptable or, one minor negligent accident may be acceptable. Acceptability of the past accident depends on the circumstance. Be cautious. Jury such a case to a manager.

4. Convictions: A driver should be conviction free. Drivers without accidents may have one minor conviction if all other factors are superior. Again, risks reporting convictions must be juried to a manager. Few such risks will be acceptable.

5. Reject any driver who, within the past 5 years, has had a serious violation (for example, a DUI/DWI for alcohol or drugs or reckless driving violation).

6. Suspensions: Reject any driver who, within the past 5 years, has had a suspension or revocation for any reason.

7. A current MVR for each driver of the van must be reviewed before binding a risk.

8. Daily round-trip mileage should not exceed 145 miles.

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Vanpools - continued

9. The operation of the van pool must be non-profit. The driver may ride free and may accumulate a "surplus" for future maintenance and contingencies. The operation of the van pool must be incidental.
   The operator of the van may not be a professional van pool driver, carry a sign or hold himself out as a public van pool operator. This would indicate that the vehicle is being operated as a public livery or conveyance and thus excluded from coverage under the policy.

10. Vans should not be over 8 years old. For vans that are customized, see the Customized Vehicle guides. There must be one seat per passenger, with a seat belt. If the word "van pool" appears on the exterior of the van, reject the risk.

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INSURANCE POINTS

The schedule of automobile insurance points listed on the following pages assigns point values to specified driving record occurrences, including convictions, suspensions, revocations and at-fault accidents.

An "at-fault accident" is any accident involving a driver insured under the policy:

1. Where a driver is proportionately responsible based on the number of vehicles involved. A driver is proportionately responsible if 50 percent responsible for an accident involving two or more drivers;

   and

2. Which results in a total payment by the insurer of at least $1,000.

An at fault accident does not include the following:

1. Involvement in a an accident in which the motor vehicle owned or operated by the insured or other driver insured under the policy was lawfully parked;
2. Involvement in an accident in which the motor vehicle was struck by a hit and run driver, if such accident was reported to the proper authorities within 24 hours;
3. Involvement is an accident in connection with which neither the named insured nor any other driver insured under the policy was convicted of a moving traffic violation and the owner or operator of another vehicle involved in such accident was so convicted;
4. For physical damage losses other than collision;
5. For an accident in which the motor vehicle was struck in the rear by another vehicle and a driver insured under the policy has not been convicted of a moving violation in connection with the accident; or
6. For an accident occurring as a result of operation of any motor vehicle in response to an emergency if the operator at the time of the accident was responding to the call to duty as a paid or volunteer member of any policy or fire department, first aid squad or any law enforcement agency.

Automobile insurance points are cumulative and accrue for all violations and occurrences set forth on Schedules 1 and 2.

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Section Revised: 03/05/10

Insurance Points

Automobile insurance points shall be deemed to accrue as follows:

1. Points for at-fault accidents shall accrue on the date that total payment by the insurer equals or exceeds $1,000. An insurer may, at its option, use the date of the accident or date of first payment provided, however, that the insurer shall not underwrite or rate any policy based on the accident until total payment by the insurer equals or exceeds $1,000, and further provided that the insurer shall use the optional date consistently in all cases.

2. Points for conviction of motor vehicle violations and other events that are set forth on an abstract of driver's license records available from the New Jersey Division of Motor Vehicles, or comparable agency of another state, shall accrue when the event is recorded in the agency's records as evidenced by an abstract.

3. When a driver insured on the policy has not accrued points during the preceding three-year period, and is subsequently involved in an at-fault accident, no points for a two- or three-point violation, as set forth in Schedule 2, shall accrue along with the points assessed in accordance with Schedule 1 for the at-fault accident, when the violation arises out of the same incident which results in the assessment of points for the at-fault accident. However, violations that arise out of the same incident may be considered by insurers for purposes of tier placement.

4. Points for each full year of court-imposed driver's license suspension within the preceding three years and points for each full year within the immediately preceding three years that a person has not held a driver's license shall accrue on the date of application for insurance. However, in accordance with Schedule 1, points assessed for failure to hold a drivers' license in the previous three years are not cumulative to points assessed for the suspension of a driver's license.

If the event takes place in a state or province other than New Jersey, Schedule 1 and 2 should be consulted for identification of the specific misconduct committed and the assessment of the appropriate number of insurance points to be assessed.

In addition to the motor vehicle violation and insurance points specifically enumerated on Schedule 2 pertaining to the New Jersey Turnpike, Atlantic City Expressway, and the Garden State Parkway, for any other motor vehicle violations that occur on the New Jersey Turnpike, the Atlantic City Expressway, the Garden State Parkway or for any other moving violation at any location, Schedules 1 and 2 shall be consulted for identification of the specific misconduct committed and the determination of the appropriate number of insurance points to be assessed.

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Schedule 1

Violation	Points
Operating a motor vehicle under the influence of alcohol or drugs	9 Points
Refusal to submit to a chemical test	9 Points
Vehicular homicide	9 Points
*Operating a motor vehicle while driving privilege is suspended	9 Points
Operating a motor vehicle without liability insurance	9 Points
Misrepresentation of insurance coverage	9 Points

*Points for operating a motor vehicle while driving privilege is suspended for failure to pay parking tickets may not be considered.

Violation	Points
Each at fault accident	5 Points
**For each full year of a court imposed driver's license suspension within the preceding 3 years	3 Points
**For each full year within the immediately preceding 3 years that a person has not held a driver's license	1 Point
Involved in a fatal accident EFTL	4 Points
NFTL	2 Points
Obtaining a driver's license or registration through deception	5 Points
Make or use counterfeit plate or plates other than issued	5 Points
Make, alter or counterfeit driver's license or registration	5 Points
Failure to verify insurance involved in an automobile accident	2 Points

**Points for failure to hold a driver's license in the previous three years are not cumulative to points for driver's license suspension.

Schedule 2

Violation	Points
Moving against traffic -- New Jersey Turnpike, Garden State Parkway, and Atlantic City Expressway	2 Points
Improper passing -- New Jersey Turnpike, Garden State Parkway, and Atlantic City Expressway	4 Points
Unlawful use of median strip -- New Jersey Turnpike, Garden State Parkway, and Atlantic City Expressway	2 Points
Operating constructor vehicle in excess of 30 mph	3 Points
Operating motorized bicycle on a restricted highway	2 Points
More than one person on a motorized bike	2 Points
Failure to yield to pedestrian in crosswalk	2 Points
Failure to yield to pedestrian in crosswalk; passing a vehicle yielding to pedestrian in crosswalk	2 Points
Driving through a safety zone	2 Points
Racing on highway	5 Points
Improper action or omission on grades and curves	2 Points
Failure to observe direction of officer	2 Points

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Schedule 2 - continued

Failure to stop vehicle before crossing sidewalk	2 Points
Failure to yield to pedestrians or vehicles while entering or leaving highway	2 Points
Operating a motor vehicle on a sidewalk	2 Points
Failure to obey direction of officer	2 Points
Failure to observe traffic signals	2 Points
Failure to keep right	2 Points
Improper operating of vehicle on divided highway or divider	2 Points
Failure to keep right at intersection	2 Points
Failure to pass to right of vehicle proceeding in opposite direction	5 Points
Improper passing on right or off roadway	4 Points
Wrong way on a one-way street	2 Points
Improper passing in no passing zone	4 Points
Failure to yield to overtaking vehicle	2 Points
Failure to observe traffic lanes	2 Points
Tailgating	5 Points
Failure to yield at intersection	2 Points
Failure to use proper entrances to limited access highways	2 Points
Failure to yield to emergency vehicles	2 Points
Reckless driving	5 Points
Careless driving	2 Points
Destruction of agricultural or recreational property	2 Points
Slow speed blocking traffic	2 Points
Exceeding maximum speed 1- 14 mph over limit	2 Points
Exceeding maximum speed 15- 29 mph over limit	4 Points
Exceeding maximum speed 30 mph or more over limit	5 Points
Failure to stop for traffic light	2 Points
Improper turn at traffic light	3 Points
Failure to stop at flashing red signal	2 Points
Failure to stop for police whistle	2 Points
Improper right or left turn	3 Points
Improper turn from approved turning course	3 Points
Improper "U" turn	3 Points
Failure to give proper signal	2 Points
Improper backing or turning in street	2 Points
Improper crossing of railroad grade crossing	2 Points
Improper crossing of bridge	2 Points
Improper crossing of railroad grade crossing by certain vehicles	2 Points
Improper passing of school bus	5 Points
Improper passing of a frozen dessert truck	4 Points
Leaving the scene of an accident	
No personal injury	2 Points
Personal injury	8 Points
Failure to observe "stop" or "yield" signs	2 Points
Moving violation out-of-state	2 Points

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GEICO AUTO NEW JERSEY GUIDE TO COMPANY PLACEMENT

Section Revised: 03/05/10

Physical Impairments Guide

No rule shall be based on whether the insured is impaired by physical or mental disabilities except those disabilities that impair the ability to operate an automobile safely.

IMPAIRMENT/ SYMPTOM	ACCEPTABLE TO GEICO	ACCEPTABLE TO GEICO INDEMNITY & GEICO CASUALTY	UNACCEPTABLE TO ALL COMPANIES
Loss of consciousness or seizures. A – Epilepsy	None	A – Petit mal epilepsy No seizures for the last 5 to 10 years. Under continuous physician care. Driving record meets criteria.	A – Seizures within the last 5 years Physician care on a continuous basis is questionable. No clear evidence of control of seizures.
B – Apoplexy/stroke		B – Apoplexy/stroke If stroke occurred more than 2 years ago. Under continuous physician care. Risk is otherwise acceptable.	B – Serious past loss possibly tied to impairment. All other types of epilepsy
C – Fainting/blackouts, vertigo or dizziness and side affects of medication.			C – Under treatment with nebupent or pentamidine.
Heart Disease - (Arteriosclerosis, angina pectoris, myocardial infarction, rheumatic heart disease and organic heart problems)	* Mild Heart condition under physician's care. Last heart attack over 2 years ago. Little, if any, restrictions of normal activities.	* Mild heart "attack" more than 1 year ago (see note 2). Some restriction of normal activities because of condition. Under physicians care.	* Serious heart "attack" within 2 years. Activities severely limited. Individual no longer employed because of condition. Previous loss possibly tied to impairment.

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IMPAIRMENT/ SYMPTOM	ACCEPTABLE GEICO	ACCEPTABLE GEICO INDEMNITY & GEICO CASUALTY	UNACCEPTABLE TO ALL COMPANIES
Metabolic disease/diabetes	Less than 70 units of insulin a day.	Under continuous physician's care. Condition appears controlled without excessive insulin intake (70-79 units a day) Over age 30	No regular physician's care. Excessive insulin intake (+80 units a day).
			Had prior loss that might be associated with condition.
	Condition controlled by oral medication and no history of poor diabetic control.		Has been hospitalized in the past for poor insulin use.
			Has suffered from diabetes since childhood or adolescence.
			Has history of poor diabetic control: hypoglycemia or insulin reaction.
Sensory impairments A – Hearing	Evidence of special ed. for deafness.	Progressive hearing loss associated with "old age".	Less than one year driving experience since deafness.
	At least 2 years driving experience since deafness.	No extensive specialized training since deafness and the loss of all hearing.	Serious past loss associated loss of hearing.
		At least 1 year driving experience since deafness.	

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IMPAIRMENT/ SYMPTOM	ACCEPTABLE GEICO	ACCEPTABLE GEICO INDEMNITY AND GEICO CASUALTY	UNACCEPTABLE TO ALL COMPANIES
Sensory (cont.) B – Vision	Vision correctable to at least 20/70 in at least one eye.	Same as GEICO sorting will be made on other factors, except telescopic lenses are acceptable in GI or GC.	Vision problems are progressive.
	License restricted to glasses or lenses or special mirrors and the individual conforms to restrictions.		Accident pattern associated with vision difficulties.
	Individuals who wear telescopic lenses are unacceptable.		
Motor and other physical handicaps including: amputees, paralysis, crippled limbs and loss of muscle control due to disease.	Has had at least 2 years driving experience with a major physical handicap (amputated leg, foot, etc.)	Has had at least 1 year of driving experience with the handicap.	Past at-fault accident or conviction possibly associated with impairment reported.
	Has had at least one year driving experience with minor handicap (amputated fingers).	If license is restricted, conforms to license requirements.	Has not had at least 1 year driving experience with handicap.
	If license is restricted, conforms to license requirements.		Handicap is of such severity that employment is precluded.
	Means to compensate for handicap are present.		Handicap results from a progressive disease (multiple sclerosis, Huntington's disease, etc.)

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GEICO AUTO NEW JERSEY GUIDE TO COMPANY PLACEMENT

Section Revised: 03/05/10

Physical Impairments Guide

IMPAIRMENT/ SYMPTOM	ACCEPTABLE GEICO	ACCEPTABLE GEICO INDEMNITY AND GEICO CASUALTY	UNACCEPTABLE TO ALL COMPANIES
Emotional disturbances and mental illness.	Past hospitalization in the last 5-10 years for serious emotional disturbance (1).	Past hospitalization and treatment for mental or emotional problem during the past 5 years and all other factors appear very favorable.	Recent hospitalization for severe emotional or mental condition and the individual is still under the physician or psychiatrist's care.
	The individual no longer has the need for psychiatric care for the condition.	The individual no longer has the need for physician/psychiatrist care for the condition (1).	Any indication of past attempts at suicide.
	Shows high levels of stability and responsibility.		
Alcohol and drug addiction.	Former alcoholic who reports control of the condition for at least the last 5 years (e.g. member of AA).	Former alcohol or addict who reports control of the condition for at least 3 years (e.g. member of AA).	Any reported excess use of alcohol or other drugs.
	All other factors are typical of a GEICO risk	All other risk factors are typical of a GI or GC risk	Any indication of drinking to excess and driving.
			Any prior serious loss or conviction that suggests uncontrolled addition to alcohol or drugs.

NOTES:
(1) A psychiatrist's statement as to the individual's ability to safely operate an automobile may be desirable in these cases.
(2) A mild heart attack is one not associated with any heart failure, abnormal heart rhythm or continuing chest pain.

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The following are commonly prescribed medications for the conditions listed on the preceding pages, along with their normal dosages:

I. Diseases Causing Loss of Consciousness (e.g., Epilepsy)

Medication	Milligrams Per Day
Celontin	600 – 1200
Depakene	750 – 1250
Depakote	750 – 1250
Dilantin	300 - 400
Gabitril	4 - 56
Klonopin	1 - 12
Lamictal	100 - 400
Mysoline	750 - 1250*
Neurontin	900 – 1800
Phenobarbital	60 - 100*
Tegretol	600 – 1200
Topamax	100 - 400
Zarontin	750 – 1250
*** higher dosage can cause sedation**	

II. Heart Disease

Medication	Milligrams Per Day	Medication	Milligrams Per Day
Aceon	4 - 16	Altace	2.5 - 20
Atacand	8-32	Coreg	6.25 – 100
Aldomet	750-2000	Cozaar	25 – 100
Avapro	150-300	Digoxin	.25 - .50
Bumex	0.5-2.0	Diovan	80 - 320
Calan	240-360	Dyazide	1 or 2 tab daily
Capoten	50 - 150	Hydrochlorothiazide	12.5 - 50
Cardura	1- 16	Hytrin	1 - 5
Cardizem	120 - 360	Hyzaar	1 or 2 tabs daily
Catapres	0.2 - 1.2	Inderal	80 – 320
Cordarone	400	Micardis	40 - 160
Corgard	40- 80	Monopril	10 - 80
Isordil	12-120	Normodyne	200 – 1200
Isoptin	240 - 360	Norpace	400 – 800
Lanoxin	.25 - .50	Plavix	75 only
Lasix	40 - 80	Plendil	5 - 10
Lipitor	10 - 80	Pravachol	10 - 40
Lopressor	100 - 400	Prinivil	20 - 40

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II. Heart Disease (continued):

Medication	Milligrams Per Day	Medication	Milligrams Per Day
Lotensin	10 - 80	Procardia	40 -120
Lotrel	1 or 2 tabs daily	Pronestyl	1600 - 6000
Mavik	1 - 4	Propanolol	80 - 320
Mexitil	600 - 900	Quinaglute	800 - 1600
Minipress	6 - 15	Quinidine Sulfate	600 -1200
Sectral	600 -1200	Vasotec	10 - 40
Sular	20 - 60	Verapimil	240 -360
Tambocor	200 -400	Visken	20 - 60
Tenormin	50 -100	Zestril	20 - 40
Teveten	400 - 800	Ziac	5/6.25tab - two 10/6.25 tabs
Tonocard	1200 -1800	Zocor	5 – 80
Trandate	200 -1200		
Trental	400 - 1200		
Tricor	67 - 201		

III. Metabolic Disease/Diabetes

Medication	Milligrams Per Day	Medication	Milligrams Per Day
Actos	15 - 45	Glynase	1.5- 12
Amaryl	1- 8	Micronase	2.5- 20
Avandia	4 - 8	Orinase	100-1000
DiaBeta	1.25- 20	Prandin	0.5-2
Diabinase	100-500	Precose	75 – 300
Glipizide	2.5 - 40	Rezulin	200-600
Glucophage	500-2550	Tolinase	100-1000
Glucotrol	2.5- 40		
Glyburide	1.5- 20		
See Diabetes section for insulin dosage standards.			

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IV. Emotional Disturbances and Mental Illness

Medication	Milligrams Per Day	Medication	Milligrams Per Day
Adapin	75-100	Prozac	20-80
Asendin	50-300	Risperdal	2-6
Aventyl	75-100	Remeron	15-45
Busparl	15-60	Serzone	100-600
Celexa	20-40	Sinquan	75-150
Desyrel	150-400	Tofranil	50-150
Doxepin	75-150	Valium	4-40
Effexor	75-375	Wellbutrin	100-300
Efflexor XR	75-225	Xanax	0.25-4
Elavil	50-100	Zoloft	50-200
Eskalith	900-1000	Zyprexa	5-20
Librium	15-40		
Lithium	900-1200		
Ludiomil	15-300		
Luvox	50-300		
Mellaril	20-200		
Nardil	15-60		
Navane	1-60		
Pamelor	75-100		
Pamate	30-60		
Paxil	20-60		

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