

August 31, 2015

Federal Insurance Office
Attention: Lindy Gustafson, Room 1319 MT
Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

Re: Monitoring Availability and Affordability of Auto Insurance

Dear Ms. Gustafson:

The undersigned consumer, community and civil rights groups appreciate the opportunity to respond to the Federal Insurance Office (FIO) notice entitled "Monitoring Availability and Affordability of Auto Insurance" published in the Federal Register on July 2, 2015. We strongly support the Federal Insurance Office's effort to assess the affordability and accessibility of auto insurance in low-wealth communities, communities of color and underserved communities and the proposed definition of affordability and Affected Persons.

The proposed definition of affordability provides an important first step in the much-needed assessment of auto insurance availability and affordability required by the Dodd-Frank Wall Street Reform and Consumer Protection Act. State laws mandate the purchase of liability auto insurance for drivers in every state except New Hampshire, yet for many low- and moderate-income good drivers the premiums charged by insurers put auto insurance out of reach. Unaffordable auto insurance leaves many Americans in the predicament of either not driving, which dramatically restricts their economic opportunities, or driving without insurance, which not only is illegal but puts them and other drivers at risk.

This letter provides our assessment of FIO's proposed definition of affordability and offers responses to the questions outlined in the noticed Request for Information. First, however, we provide a general overview of our thoughts on the subject matter of this request.

In order to assess whether a market is affordable, two basic questions must be answered: *affordable to whom?* and *what constitutes affordability?* These questions are at the heart of FIO's notice, and we generally agree with FIO's proposed answers. We concur that the assessment of affordability should be relative to the purchasing capacity of low- and moderate-income drivers, as well as drivers of color and other underserved Americans, whom the notice collectively refers to as Affected Persons. Below we offer suggestions on how to further refine the definition of Affected Persons; it is essential that affordability is gauged against the ability of low-wealth drivers to purchase insurance and not be measured against a broader national, state, or regional household median income.

We also agree that, for the purposes of this assessment, an affordability index must be precisely defined rather than defined loosely as "within the financial means of most people," as some industry representatives have suggested. We agree that two percent of the household income of an Affected Person is an appropriate standard. However, we caution that this standard is viable only as long as the definition of "Affected Persons" appropriately limits the household income used as the baseline for measurement. For example, if we were to consider the national median household income of a little more than \$50,000 as the baseline, a two percent standard yields a \$1,000-plus auto insurance premium that is far too expensive for most low- and moderate-income drivers. The baseline income against which premiums are measured must accurately reflect the income of Affected Persons. Further, as we explain below, we consider any percentage higher than two percent to be conclusively unaffordable to low-income Americans irrespective of the income baseline.

In short, we believe that it would be appropriate for FIO to determine that auto insurance premiums higher than two percent of the household income of a well-defined set of Affected Persons are unaffordable. While getting to this assessment would mark a milestone for insurance consumer protection, it must be recognized only as the beginning of a state-by-state effort to ensure that drivers are able to comply with states' auto insurance mandates.

Responses to General Solicitations

1. FIO's proposed working definition of "affordability" in relation to personal auto insurance

As noted above and in our previous comments, we support the creation of an affordability index that defines affordability as a reasonable percentage of a household's annual income.¹ In addition, for the purposes of this evaluation of the availability and accessibility of auto insurance to Affected Persons, we believe that a two percent of household income standard is consistent with previous analyses of basic household budgets, surveys on the public's perception of affordability, a California program aimed at providing affordable auto insurance to lower-income drivers, and other data as discussed below.

a. Affordability in the context of financially strained households

Recent research documents the great financial demands on Affected Persons that makes it difficult for many to afford mandated liability coverage. In January of this year, the Pew Charitable Trusts released a report concluding that 70 percent of all U.S. households face financial strains on their income, expenses, or wealth, with 29 percent of all households experiencing strains on at least two of the three.² More recently, the Board of Governors of the Federal Reserve System released a study, based on survey research, revealing that 24 percent of all U.S. households experienced a financial hardship in the past year such as the loss of a job or large medical expense. The report also showed that 47 percent of all households could not "fairly easily" pay for a hypothetical emergency expense of \$400.³ Many financially stressed and at-risk households would have difficulty affording mandated liability insurance that cost more than \$400 for a household with \$20,000 annual income and \$600 for a household with \$30,000 annual income, which represent the two percent threshold proposed by FIO.

b. CES and IRC calculations of insurance expenditure to income ratios

In its notice, FIO refers to Bureau of Labor Statistics Consumer Expenditure Survey (CES) data indicating that the average household expenditure on auto insurance represents 1.6 percent of household income. FIO also cites a 2013 study by the Insurance Research Council (IRC) that shows average auto insurance expenditures have hovered around 1.6 percent of median income for the last several years and have remained below two percent for two decades. It must be noted that in these analyses, "auto insurance expenditures" includes the amount spent on all auto insurance coverage, including any premium paid for liability coverage above minimum limits as well as physical damage (comprehensive and collision) coverage. This expenditure is necessarily more than the average premium for minimum limits liability coverage that appears to be the focus of FIO; therefore, the actual percentage of the median income

¹ Consumer Federation of America (CFA), (June 9, 2014), available at <http://www.regulations.gov/#!documentDetail;D=TREAS-DO-2014-0001-0011>.

² "The Precarious State of Family Balance Sheets." Washington, DC: The Pew Charitable Trusts, January 2015. http://www.pewtrusts.org/~media/Assets/2015/01/FSM_Balance_Sheet_Report.pdf.

³ "Report on the Economic Well-Being of U.S. Households in 2014." Washington, DC: Board of Governors of the Federal Reserve System, May 2015. <http://www.federalreserve.gov/econresdata/2014-report-economic-well-being-us-households-201505.pdf>.

income spent on basic liability coverage is *well below* 1.6 percent. As such, if 1.6 percent of income is accepted as a reasonable estimate of what average Americans pay for *all* their auto insurance needs, then a two percent standard of affordability *that includes only mandated minimum limits coverage* is certainly a reasonable upper limit of an affordability index for Affected Persons.

c. Affordability based on California Low-Cost Auto Insurance

In California, the California Low Cost Auto Insurance program - <http://mylowcostauto.com> - which is managed in conjunction with that state's residual market, offers a basic liability insurance policy to good drivers with household incomes at or below 250 percent of the federal poverty level. This includes incomes of up to \$29,425 for a single person household and \$60,625 for a family of four. It is likely that most people who qualify for that program would also be identified as an Affected Person for the purposes of FIO's market monitoring, and the premiums offered under that program provide a good basis for establishing an affordability benchmark.

The annual premium for that policy ranges between \$213 and \$363 for good drivers. The highest price, which is for good drivers in Los Angeles and Orange counties, represents 1.7 percent of the income of households earning \$21,000 per year, which is approximately the cutoff for the lowest income quintile, (that is, the poorest 20 percent of Americans). For lower-priced regions of the state, the premium equals about 1.0 percent of these poorest Americans. California's program further validates the FIO proposal that two percent of household income is an appropriate upper limit for affordable auto insurance.

d. Recognizing the impact of physical damage coverage on the cost of auto insurance for drivers with car loans.

In its request, FIO proposes limiting the consideration of affordability to liability coverage, presumably the minimum limits required by the state. While it is correct that for most low-wealth drivers there is no asset-protection basis for purchasing more than the required minimum liability insurance, for the many million low- and moderate-income Americans who have car loans, comprehensive and collision insurance is required by their lender. These drivers, who cannot afford to purchase a car outright, have no choice but to purchase these additional coverages. Having a car loan, of course, does not indicate that a driver has more income available for insurance purchases than those without a loan; indeed, they likely have less as a result of their monthly car payments.

Using CES data, a 2015 Consumer Federation of America report estimated that eight million low-and moderate-income Americans are required by lenders to purchase comprehensive and collision coverage for their financed autos.⁴ Typically, the comprehensive and collision coverage required by lenders costs approximately the same amount as the basic liability policy offered by a company.⁵ Therefore, even if FIO does not include physical damage coverage in its affordability index, the mandatory nature of its purchase for so many Affected Persons demands that this cost be considered when defining affordability. That Affected Persons with car loans will have to pay nearly double the premium addressed by the affordability index provides another reason that the index for liability-only coverage be limited to the proposed two percent standard.

⁴ Brobeck, Stephen. "Large Auto Insurers Charge High Prices, to a Typical Lower-Income Safe Driver with Car Financing, for Minimal Coverage." Washington, D.C.: Consumer Federation of America, January 26, 2015. <http://consumerfed.org/news/851>.

⁵ In 2012, auto liability average premiums were \$504 nationally and physical damage premiums were \$424, so liability represents 54 percent of the total premium. NAIC Auto Insurance Database Report, 2011-2012.

e. Affordability based on public views of a fair annual cost of mandatory liability coverage

In September 2013, CFA commissioned ORC International to conduct a representative survey of 1,000 Americans to determine what consumers viewed as a fair annual price for minimum liability coverage. After explaining that all states but one required drivers to carry minimum liability insurance, the survey asked respondents: “For, say, a 30-year old woman with a modest income and ten years of driving experience with no accidents or moving violations, what do you think is a fair annual cost for the required minimum level of this liability insurance?” Over three-quarters (76 percent) responded that a fair annual premium should be less than \$500, or affordable only to households with an annual income of \$25,000 or more based on the proposed FIO affordability index.⁶

Likewise, 40 percent said that the premium for minimum liability coverage premium should be under \$250, or affordable to households with an annual income of \$12,500 or more based on the proposed FIO affordability index. Only five percent responded that the premium should be at least \$1,000, or affordable to households with annual incomes of \$50,000 or more. Americans, this survey shows, understand the importance of access to an affordable basic auto insurance policy, and, further, the public's estimate of what is affordable appears to be in line with the standard proposed by FIO and supported by the data discussed above.

2. Comments on key factors FIO proposes to use to calculate an affordability index for Affected Persons (e.g., premium, income, and other metrics).

The proposed affordability index applies to a significant market share of policies written to low-wealth drivers and drivers of color. We support the idea of using an affordability index for Affected Persons and agree with several of the proposed definitions provided in the notice. However, by limiting the scope of the affordability index to minimum liability coverage (as discussed above) and to the standard market (discussed in subsection d below), we believe that the proposed definition of affordability may not fully capture the actual cost of mandated auto insurance faced by low-wealth drivers. We also disagree with the use of urban areas as a proxy for underserved communities and believe that could improperly increase the underlying income against which affordability is measured. We offer further comments on these and other proposed factors for identifying Affected Persons below.

a. Identifying LMI persons as Affected Persons

We support the proposed definition of LMI individuals, including the proxy income determination for LMI people as people living in LMI geographic areas, except that the term "geographic areas" should be refined to focus explicitly on LMI "ZIP codes." The definition of low-income as median family income of less than 50 percent of area median income (AMI) and moderate-income between 50 percent and 80 percent is widely used and understood when determining the access and affordability of financial products and services under the Community Reinvestment Act and defined by the FDIC.⁷ Somewhat differently, HUD uses the 50 percent of area median income as a definition for very low-income and 50-80 percent of area median income as a definition for low-income for its programs.⁸ Using 80 percent of AMI as a basis

⁶ Feltner, Tom, Stephen Brobeck, and J. Robert Hunter. “The High Price of Mandatory Auto Insurance for Lower Income Households: Premium Price Data for 50 Urban Regions.” Washington, DC: Consumer Federation of America, September 2014. http://consumerfed.org/pdfs/140929_highpriceofmandatoryautoinsurance_cfa.pdf. Page 2.

⁷ FDIC, “Community Reinvestment Act (CRA) Performance Ratings,” available at <https://www2.fdic.gov/crapes/peterms.asp>.

⁸ “FY 2015 Income Limits Briefing Materials.” Washington, DC: U.S. Department of Housing and Urban Development Office of Policy Development & Research, March 10, 2015. http://www.huduser.org/portal/datasets/il/il15/IncomeLimitsBriefingMaterial_FY15_Rev_2.pdf.

for defining a ZIP code of LMI individuals (and thus Affected Persons), as FIO proposes, will provide consistency with existing income definitions.

b. Identifying residents of Majority Minority ZIP codes as Affected Persons

For the purposes of defining affordability, we support FIO's consideration of the affordability and accessibility of auto insurance in majority minority ZIP codes. We believe that similarly situated drivers living in communities of color pay, on average, substantially higher rates for similar coverage and that it is critical to monitor the affordability of insurance in these communities.

c. Choosing "urban area" as a proxy for underserved communities will undermine FIO's ability to monitor affordability for Affected Persons

FIO proposes to monitor affordability in underserved communities by using as its proxy "urban areas," defined as "densely developed territory that encompasses at least 1,500 people..." We believe that this is an insufficient proxy because it may include higher income communities that are not underserved and, moreover, drive up the income of the area. As the proposed standard would deem insurance presumptively affordable wherever the affordability index does not exceed two percent for LMI persons, residents of majority minority ZIP codes, *or* Affected Persons in urban areas, we believe that the potential for high income ZIP codes to errantly result in a presumption of affordability is too great.

As an alternative, FIO could attempt to identify ZIP codes that have high levels of uninsured motorists as a proxy for underserved. However, this data may not be easily obtained. As such, we believe that the two factors discussed above – LMI ZIP codes and majority minority ZIP codes – sufficiently capture those communities that would be properly considered underserved in this context.

Therefore, we would propose the following standard:

Personal auto liability insurance is presumed to be affordable if, with respect to household income, the affordability index does not exceed two percent for Affected Persons in LMI ZIP codes and drivers living in majority minority ZIP codes.

d. Affordability is a concern in both the standard and the non-standard market

In its request, FIO suggests excluding residual market premiums and non-standard premiums from its calculation of an affordability index. While we agree that the residual and non-standard markets are both more expensive, we do not believe they should be entirely removed from the analysis, because both of those markets serve, to some extent, good drivers who are Affected Persons. Indeed, one of the most pernicious forms of contemporary redlining is when an insurer shunts a good driver into a non-standard affiliate due to socio-economic factors (including a prior lapse in coverage). As such, we believe that FIO should incorporate data from those markets under the following limited circumstances:

- **Residual Markets.** FIO should collect data from the residual markets of any state in which the residual market represents one-half of one percent (0.5 percent) or more of the private passenger auto insurance market (approximately six states).⁹ From those states it should only include the premium offered to good drivers. (We note that establishing a standard for determining a good driver may be

⁹ See, for example, "Residual Market Share" (March 2015) published by Insurance Information Institute <http://www.iii.org/issue-update/residual-markets>

needed and point to California's standard of a driver with no more than one point on his or her record as a model.)

- Non-standard insurers. To the extent that a non-standard insurer would otherwise be subject to the data call as described below, FIO should collect data from it in the same manner as collected from the standard market companies except that, with non-standard companies, only premiums for good drivers should be included in the overall evaluation of a particular market for Affected Persons with respect to the affordability index. By excluding drivers with bad driving records (and because, as is discussed below, we do not suggest collecting premium data on the rare and exotic automobiles sometimes insured in the non-standard market), the premiums from the non-standard market will help provide a more realistic picture of the premiums to which actual Affected Persons have access.

3. How FIO could best obtain appropriate data to monitor effectively the affordability of personal auto insurance for Affected Persons.

a. Source of data

We believe that the most reliable way to monitor the auto insurance marketplace for affordability is to obtain premium data directly from companies. FIO should issue a data call, on a state-by-state basis, on all insurers that write more than one million dollars in that state, or the largest 100 insurers, whichever is fewer. The data call should request specific, but not personally identifiable, premium and policy data as described below.

FIO has the legal authority to make this request. Pursuant to 31 U.S.C. §313(e)(1), FIO is authorized to collect insurance data directly from insurers and under 31 U.S.C. §313(e)(6), the Director of FIO is authorized "to require by subpoena the production of the data or information" related to consumer access to affordable auto insurance.

We also believe that voluntary data submissions would not serve the public interest or the mandate of the law. Undoubtedly, those companies exhibiting unaffordable insurance premiums would be disinclined to provide the data voluntarily, which would limit the ability to truly determine the accessibility of affordable auto insurance for Affected Persons. In order to be able to meaningfully monitor the insurance markets, FIO should collect and analyze the full breadth of premiums available to Affected Persons. Further, FIO should receive this data in a comprehensive and machine readable form.

b. Data to collect

In order to monitor the auto insurance marketplace and make any assessments as to the availability of affordable insurance to Affected Persons, the data that FIO collects from insurers must reflect the premiums actually offered to Affected Persons and not a broad average that is lowered by premiums that are only available to drivers of higher socio-economic status.

Determining the premiums charged to Affected Persons lies at the heart of monitoring the auto insurance market for affordability. However, auto insurance premiums are developed on a driver-by-driver basis using a complicated, multiplicative rating factor system that includes both driving and non-driving factors. As a result, there is not a single premium from each company that can be associated with any particular area or population.

Premiums in any given area, even when limited only to those offered to good drivers, can vary widely around a range of factors including annual miles driven, occupation, credit score, level of education,

marital status, homeownership, history of prior insurance coverage and others. Further, because premiums for good drivers of lower socio-economic status tend to be higher than those offered to high wealth drivers, using an overall average premium would falsely lower the market's average price by including premiums that are not actually available to lower-income drivers due to the various factors considered by insurers.

Therefore, we urge FIO to base its premium calculation for any group of Affected Persons on a series of typical low-wealth driver profiles. We would be happy to provide a set of profiles to use for this premium calculation. The following is a list of suggested factors and factor options that could be used to construct data call profiles:

Primary Driver Characteristics	Options
Sex	Male and Female
Age	20, 30, 45, and 67
Driving Safety Record	0 (0 accidents/0 tickets) and 1 (1 accident/1 ticket)
Annual Miles	7,500 and 12,000
Type of Car	2004 Honda Civic and 2000 Ford Explorer
Credit History	Poor, Fair, and Good
Marital Status	Single, Married, and Divorced
Occupation	Janitor, Retail Cashier, Factory Worker, Teaching Assistant, Retired, and Unemployed
Level of Education Completed	High School, Associate Degree, and Bachelors Degree
Current Insurance Status	Currently insured, Haven't needed insurance, and Uninsured/my insurance ran out
Years with current insurance company	Less than 1, 3, and 10

By combining these or similar factor options in various ways, FIO could provide insurers with a list of several profiles for which they would provide premiums for all identified ZIP codes to be monitored. The average of these premiums in each ZIP would serve as a reasonable proxy for the cost of insurance for an Affected Person in that ZIP code.

Conclusion

FIO has begun to tackle an important responsibility established for it by the Wall Street Reform and Consumer Protection Act. Auto insurance is a unique product, the purchase of which is required of every driver in all but one state. Yet it is sold under different rules in every state, and within states, even within localities, drivers with perfect records can be charged dramatically different premiums. Until now, there has been no federal entity tasked with understanding how the cost of this mandated product impacts low- and moderate-income Americans, people of color or underserved communities generally.

While these comments provide some suggestions for refinement of the approach to meeting this responsibility initially proposed by FIO, we believe that, fundamentally, the approach is sound. Establishing a *two-percent of Affected Persons' income* standard will allow FIO to effectively monitor the affordability of the auto insurance market for those who have the least financial flexibility. Please do not hesitate to contact J. Robert Hunter, director of insurance at Consumer Federation of America at (202) 387-6121 with any additional questions.

Sincerely,

National groups

Americans for Financial Reform
Consumer Action
Consumer Federation of America
Consumers Union
NAACP
National Association of Consumer Advocates
National Consumer Law Center (on behalf of its low-income clients)
National Council of La Raza
U.S. PIRG
United Policyholders

State groups

Alaska Public Interest Research Group, AK
Center for Economic Integrity, AZ
California Reinvestment Coalition, CA
Consumer Federation of California, CA
Consumers for Auto Reliability and Safety, CA
Public Advocates, CA
Delaware Community Reinvestment Action Council, DE
Consumer Federation of the Southeast, FL
Florida Alliance for Consumer Protection, FL
Georgia Watch, GA
Citizen Action/Illinois, IL
Health & Disability Advocates, IL
NAACP (Chicago Southside Branch), IL
Open Communities, IL
Partners in Community Building, IL
Project IRENE, IL
Woodstock Institute, IL
Indiana Association for Community Economic Development, IN
Kentucky Equal Justice Center, KY
Consumer Assistance Council, Inc. of Cape Cod and the Islands of Massachusetts, MA
Massachusetts Consumers Council, MA
Maryland Consumer Rights Coalition, MD
Vehicles for Change, MD
Maine Center for Economic Policy, ME
Three Rivers Community Action, MN
Coalition for a Prosperous Mississippi, MS
Rural Dynamics, Inc., MT
North Carolina Consumers Council, NC
Reinvestment Partners, NC
New Jersey Citizen Action, NJ
New York Public Interest Research Group (NYPIRG), NY
Western New York Law Center, NY
NHS of Greater Cleveland, OH
Policy Matters Ohio, OH

State groups (con't)

Oregon Consumer League, OR
The One Less Foundation, PA
Fair Credit Foundation, UT
Virginia Citizens Consumer Council, VA
Virginia Poverty Law Center, VA