

## **Comments of the Consumer Federation of America and the Center for Economic Justice**

### **To the NAIC Auto Insurance Working Group**

#### **Regarding Proposed Report on Auto Insurance Affordability**

**November 12, 2018**

As the Auto Insurance Working Group appears to have gone into hibernation again, CFA and CEJ write to suggest approaches for the NAIC to meaningfully examine issues of availability and affordability of personal auto insurance and to respond to the ludicrous comments made by industry on the draft “report” outline.

#### **Articulate the Questions the Analysis and Report are Attempting to Answer**

The major failing of the August 10, 2018 draft outline – which, in turns, leads to the other problems with the outline/report and the overall NAIC effort – is the failure to articulate the purpose of the report and the questions the analysis is trying to answer. The current draft is largely a history of NAIC activities and a description of the limited data industry has been willing to provide and which regulators have been willing to accept.

The foundation of any NAIC report or analysis should be the purpose of the report and analysis and the questions to be answered. This step is critical because the industry’s effort to define the purpose of the study is inconsistent with both the role of the NAIC and an analysis of availability and affordability. We discuss the risible industry comments in detail below, but the purpose of NAIC effort is not to evaluate whether insurers’ rates comply with statutory requirements. The NAIC is not a regulator. The job of ensuring compliance with state laws and regulations is that of state insurance regulators. The role of the NAIC is to assist states and, in this instance, that assistance is performing data collection and research to inform public policy discussions.

Again, back to fundamentals. What is the purpose of a NAIC effort to examine auto insurance issues? Here are the questions that should guide the data collection, analysis, and report:

- How do we define availability for purposes of personal auto insurance?
- How do we measure such availability?
- How does availability vary across different types of communities defined by geography, prohibited classifications and permitted classifications?
- Are there communities or groups of consumers for whom availability is limited, however defined?
- If availability is limited for some groups of consumers, can we identify the causes of availability problems?

- How do we define affordability for purposes of personal auto insurance?
- How do we measure such affordability?
- How does affordability vary across different types of communities defined by geography, prohibited classifications and permitted classifications?
- Are there communities or groups of consumers for whom personal auto insurance unaffordable, however defined?
- If personal auto insurance is unaffordable for some groups of consumers, can we identify the causes of availability problems?
- Based upon these analyses, are there actions that insurers, regulators, consumers or legislators can take to address problems of availability and/or affordability?

We provide detailed comments on how to collect and analyze data to answer these questions following our review of industry comments.

### **Industry Comments – PCI in particular – Are Obstructionist and Ludicrous**

The industry comments on the draft “outline” were led by PCI in a letter from David Snyder. In addition, PCI and other industry trades have criticized CFA and CEJ’s comments to the working group. We review and respond to these various comments.

PCI argues that data, aggregated so that no individual insurer’s experience can be identified, submitted to a trade association, with no regulatory authority, should enforce model laws that have no authority.

PCI respectfully requests the NAIC take all steps necessary to avoid public release of the aggregated data provided by the statistical agents in light of the legal protections provided by both state and federal law which generally exempt from public disclosure any information which is a trade secret or submitted by a commercial enterprise

PCI’s arguments are absurd. First, PCI has no standing to argue for a trade secret since PCI’s data are not at issue. Second, there can be no trade secret argument for any individual company since no individual company’s data have been submitted to the NAIC or are at risk of release. Third, the NAIC is not a regulator. Fourth, the model laws cited by PCI are model laws and not authority for the NAIC to enforce as if they were actual laws. Fifth, PCI’s arguments are factually incorrect and are, therefore unsurprisingly, without any empirical support. The data are largely publicly available as they are similar data to public statistical reports submitted by the statistical agents to each state. The data have no commercial value to reporting companies since the data are not data of any individual reporting company. The release of the data pose no threat to the competitive position of any insurer since, one, these are precisely the type of aggregate data used to promote competition by providing credible experience to small and medium sized insurers, and, two, no individual insurer data is in play.

PCI's bad-faith arguments about trade secrets are part of its broader effort to undermine the work of the Auto Insurance working group to examine issues of affordability and availability of personal auto insurance. PCI's argument that only insurers and regulators have the knowledge and skills to analyze insurer data and evaluate these issues is, again, absurd and factually incorrect. It is profoundly anti-democratic for the practices of insurers and the regulatory oversight of those insurer practices to be unaccountable to the public.

Finally, PCI's comments reveal its true intent – to use the NAIC Auto Insurance Working Group effort to advance its trade association agenda and not to support an important and legitimate public policy inquiry. The consumer organizations that, many years ago, urged the NAIC to initiate the study of availability and affordability have been committed to a research agenda to objectively examine the issues in a way to inform public policy discussion. Consumer organization proposals have consistently been organized around obtaining information to answer questions that affect millions of consumers. In contrast, PCI's recommendations have been oriented around closing off public debate and restricting the data collection and analysis to support PCI's political talking points.

PCI does not want an objective analysis of availability and affordability of personal auto insurance, so PCI is desperately trying to change the conversation. The charges of the working group make clear that the goal is to examine issues of availability and affordability affecting low-income households.

- Review issues relating to low-income households and the auto insurance marketplace and make recommendations, as appropriate
- Consider the collection of data to evaluate the availability and affordability of auto insurance.

PCI seeks to use the “outline” as a political tool to advance its agenda rather than an objective study, as evidenced by PCI's proposed changes. PCI's proposed additions to the outline focus on statutory requirements for rates and whether premiums charged meet these statutory requirements. PCI's comments are a blatant effort to change the topic and to do so in a way that asks the NAIC to usurp the role of state insurance regulators.

It is wholly inappropriate for the Auto Insurance Working Group efforts to be, as requested by PCI, oriented around whether insurers' rates comply with statutory standards. First, the NAIC is not a regulator – as PCI has pointed out when objecting to any proposal for the NAIC to provide a resource to the states for review of complex algorithms and models. Second, it is the role of the states to enforce statutory rate requirements, and no one is suggesting that the working group should be investigating states' performance in this regard. Third, it is not possible to examine an issue if you are asking questions irrelevant to that issue and failing to analyze the relevant information about that issue. Yet, that is precisely what PCI – and industry – urge the working group to do.

PCI's efforts to undermine the working group's efforts are based on blatant lies as demonstrated by PCI's Robert Gordon's commentary, cited in Insurance Compliance Insight:

“Certain activist groups that have opposed current state risk-based insurance standards are now criticizing a report that they have not seen and has not been completed. They are also criticizing the accuracy of data that is, in part, required by law, with fines for misstatements. This data is also relied upon by much of the industry for analyzing risk. “It is unfortunate, but not atypical, that these activists are preemptively impugning the motivations of the entire state regulatory system before the report is even completed,” he said.

The aggregated data provided by statistical agents is the best approach, Gordon insisted. “Insurance rates are set based on law and reflect the realities of the risks that are being covered. Raw data without that context would be confusing at best and misleading at worst,” Gordon summed up. “Suggesting that the report use data that identifies individual companies would have the states, through the NAIC, selecting winners and losers. The NAIC appropriately rejected that approach.”

Where do we start with this miasma of misinformation? The Consumer Federation of America (CFA) is an association of non-profit consumer organizations that was established in 1968 to advance the consumer interest through research, advocacy, and education. Today, nearly 300 of these groups participate in the federation and govern it through their representatives on the organization's Board of Directors. The Center for Economic Justice has been advocating on behalf of insurance consumers since 1995. Bob Hunter and Birny Birnbaum both served as state insurance regulators and both are recognized experts in analysis of insurance markets and insurance data. Gordon's attempt to denigrate CFA's and CEJ's efforts by terming CFA and CEJ as “activists” is particularly pathetic coming from a paid lobbyist. By failing to release the industry-aggregate data to the public, the working group members are denying themselves the opportunity for insights that experts like Hunter, Birnbaum and many other academics and scholars could offer and unnecessarily casting a cloud over the research effort.

Gordon lies when he claims that “certain (unnamed) activist” groups have opposed current risk-based” standards. Neither CFA nor CEJ have taken that position. CEJ has routinely argued for risk-based pricing in dozens of NAIC and other forums.

CFA and CEJ are, of course, not “impugning the motivations of the entire state regulatory system before the report is even completed.” We are objecting to a proposed report that will fail to address the charges of the working group. And there is no more a need to wait for the report to be issued to conclude the report will fail to answer the relevant questions than to wait for a building built on a foundation of sand to be completed before we can state the building plans are faulty. Putting aside the fact that industry – not regulators or independent researchers – has decided what data industry is willing to provide, the feasibility of any research depends on the data and information available for that research, and industry has dictated what data will be available and, therefore, what type of analysis will be possible.

Gordon's claims about individual company data are factually incorrect. Collecting and analyzing individual company data allows regulators to examine market dynamics in a way that aggregate data do not permit. Looking at industry aggregate experience in a sub-state geographic area reveals nothing about what types of insurance at what cost are offered by what types and how many insurers. A study of availability and affordability is about distributional issues. Aggregate data do not permit an analysis of distributional issues. Further, analyzing distributional issues does not create insurer winners and losers – what exactly would an insurer win or lose? – but does allow an examination of consumer winners and losers.

We urge the working group to forcefully reject the arguments and comments of PCI.

### **Suggested Report Outline**

CFA and CEJ suggest the following outline for the working group's report. We will be happy to answer questions about this proposal at the working group's meeting next week.

1. Purpose of the Report
  - a. Why examine auto insurance availability and affordability?
    - i. Critical role of automobiles for economic development of low- and moderate income consumers
    - ii. Requirements for purchasing auto insurance
    - iii. High cost of auto insurance for some consumers
    - iv. Enforcement efforts of the states and high cost to consumers of failing to maintain required insurance
  - b. Prior efforts – and limitations – to examine auto insurance availability and affordability issues
  - c. Contribution of this report to examining the issues
    - i. Questions to be answered
    - ii. Improvements over prior efforts
2. History of the Working Group's efforts
  - a. How did the working group get to this point
  - b. History of the discussions about data needed and data collection
    - i. Original proposals
    - ii. Industry opposition and subsequent proposal
    - iii. Review of industry data proposal – pros, cons, working group decision
    - iv. History/timeline of industry data submission and follow ups.

3. Data Available to Working Group
  - a. Insurer data
    - i. Statistical Agents
    - ii. Uninsured Motorist
    - iii. Lender-Placed Insurance
  - b. Non-insurer data
    - i. Socio-Economic Data by Geographic Area
    - ii. Non-insurer Uninsured Motorist Data
  - c. Matrix of data used versus questions to be answered
  - d. Data limitations
4. Analysis of Data and Other Information
  - a. Data Validation Efforts
  - b. Data Analysis Results by Question
  - c. Insights by Question
5. Conclusions Regarding Affordability and Availability
  - a. What are useful working definitions of availability and affordability?
  - b. What can we say about availability and affordability for low- and moderate income communities based on this analysis?
  - c. What can we say about causes about any identified availability and affordability problems
6. Recommendations for Policymakers
  - a. What actions have some states already taken? Have these actions been successful? Why? Why Not?
  - b. What other actions might states take?
  - c. What can the NAIC do to assist the states in
    - i. testing new methods of analysis
    - ii. new efforts to address cost drivers
    - iii. new product innovations that better empower consumers to reduce risk and premium
7. Recommendations for Further Analysis
  - a. What critical questions remain unanswered?
  - b. What future analysis is needed and how can that analysis be undertaken?
  - c. Who should undertake any further analysis?