Consumer Federation of America

November 22, 2021

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Policy and Legislative Affairs Division
Washington State Office of the Insurance Commissioner

Re: Comments of Consumer Federation of America in Support of CR-102 for R 2021-07: Temporary Prohibition of Use of Credit History for Three Years After Conclusion of Public Emergency

Dear Mr. Forte:

The Consumer Federation of America (CFA) submits these comments in support of rules to temporarily prohibit the use of credit history to determine premiums and eligibility in private passenger auto, homeowners, and renters insurance for three years after the conclusion of the public emergency resulting from the COVID-19 pandemic. This temporary prohibition on the use of credit history to determine insurance rates for personal lines insurance is necessary to address the unfair discrimination created by the impact of the pandemic and related public policy responses on consumer credit histories, as well as the pandemic's exacerbation of racial and ethnic disparities caused by the use of credit history in insurance underwriting, pricing, and other practices.

Introduction

CFA is an association of more than 250 national, state, and local non-profit consumer organizations and public agencies that was founded in 1968 to advance the consumer interest through advocacy, research, and education. CFA has worked on insurance policy for decades under the direction of J. Robert Hunter, former Federal Insurance Administrator and former Texas Insurance Commissioner. We urge the Office to adopt this rule prohibiting the use of credit history in personal lines insurance for three years after the end of the COVID emergency declaration in Washington State.

Washington State requires all drivers to purchase auto insurance—state minimum liability coverage is $25,000/$50,000 and $10,000 for bodily injury and property damage liability, respectively. Similarly, banks demand that prospective home buyers purchase and maintain homeowners insurance in order to obtain a loan. These public and private mandates to buy insurance products creates a special obligation to prioritize affordability and fairness in the marketplace. But this obligation is not just implied; the Insurance Commissioner has a statutory responsibility to ensure that insurance rates are not excessive, inadequate, or unfairly discriminatory. This responsibility includes, as the proposed rule states, "enacting rules that ensure the use of credit history and credit history factors in setting insurance premiums is not excessive, inadequate, or unfairly discriminatory."

While there is evidence that any use of credit history, under any economic conditions and irrespective of a state of emergency, leads to unfair discrimination in the insurance market and conflicts with other public policy goals, the proposed rules do not engage that concern. As such, we focus these comments on the appropriateness of the proposed rules, the benefits of implementing them, and the implications of failing to do so.

In order to understand the reasons that the use of credit history can be deemed *unfairly* discriminatory under the current pandemic-influenced conditions, it is important to describe how credit history is used to discriminate among consumers. While our discussion here focuses on auto insurance rating, the practice is conceptually the same in homeowners and renters insurance, as well as in the underwriting practices of insurers (the worse one's credit history, the more likely they will be deemed ineligible for coverage or shunted to a more expensive affiliate insurer). Furthermore, while insurers argue that they use "credit-based insurance scores" rather than traditional "credit scores," both are largely derived from the same credit histories compiled by the same credit bureaus and converted to their respective scores using the same overarching principles about what credit characteristics lead to better or worse scores.

How Credit History Impacts Auto Insurance Premiums in Washington

When insurance companies use consumer credit history, they do so in a manner that results in higher premiums for policyholders with worse scores and lower premiums for drivers with better scores, all else being equal. In late 2020, prior to the implementation of the Washington Office of the Insurance Commissioner's (OIC) emergency regulation regarding the use of credit, CFA acquired auto insurance premium data from Quadrant Information Services, LLC for every ZIP code in the United States. We analyzed the premium data for Washington State, which includes prices from ten of the largest auto insurers in the state, and found that they charged consumers dramatically different premiums based on their credit history, even if all other characteristics remained constant and their driving records were perfect.

To purchase minimum limits, liability-only auto insurance policy in Washington, consumers with excellent credit-based insurance scores and a perfect driving record paid an annual premium of $468 on average statewide. Consumers with the same driving record but only fair credit paid an average annual premium of $636 —$165 more, or a 35% increase. Consumers with poor credit paid an average annual premium of $836 —$370 more than drivers with excellent credit, or a 79% increase.[1]

Table 1 below shows the average statewide premiums of ten Washington auto insurers based on policyholders' credit history.

Table 1: Washington Average Auto Insurance Premiums By Insurer and Credit History

Auto Insurer	**Excellent Credit**	**Fair Credit**	**Poor Credit**
Allstate	$679.22	$956.89	$1,282.17
American Family	$551.89	$644.50	$751.99
Enumclaw	$560.21	$652.06	$873.15
GEICO	$400.42	$512.62	$547.63
Mid Century	$836.87	$1,047.61	$1,293.31
Pemco	$264.98	$445.53	$748.63
Progressive	$311.87	$519.97	$648.60
Standard	$529.19	$723.67	$981.35
State Farm	$293.01	$495.24	$833.84
USAA	$253.21	$331.52	$419.89
Overall Average	**$468.09**	**$632.96**	**$838.06**

The data are based on rates for state minimum liability coverage—25/50/10—in effect as of August 2020 and are representative of publicly sourced data using the following driver profile: The driver profile for this information is a 35-year-old, unmarried driver who has been licensed for 19 years and has a perfect driving record. The driver has a high school diploma, rents their home, and drives a 2011 Honda Civic LX. Their commute is 12 miles a day, 5 days per week, for a total of 12,000 miles per year.

While the surcharging of lower credit drivers is consistent, the actual impact on drivers varied widely among companies. A customer of American Family would see a premium increase of 36% if they had poor credit rather than excellent credit while a State Farm customer would face a 185% penalty – a near-tripling of the cost of coverage – for their poor credit and despite their clean driving record.

In many individual ZIP codes, the impact of credit history is quite dramatic. In the Seattle ZIP code of 98115, a driver with excellent credit pays an average annual premium of $627.65. But if the exact same driver has fair credit, their average premium jumps to $855.50. And if they have poor credit, their annual premium is $1,137.80, even if their driving record is perfect. Table 2

[1] "Insurance Companies Charge 79% More to Safe Drivers in Washington State Due to Low Credit Scores; State Farm Nearly Triples Premium for Good Drivers with Credit Problems." Consumer Federation of America. January 12, 2021. Available at https://consumerfed.org/press_release/insurance-companies-charge-79-more-to-safe-drivers-in-washington-state-due-to-low-credit-scores-state-farm-nearly-triples-premium-for-good-drivers-with-credit-problems/.

below shows the average premiums by credit history in several Washington ZIP codes in various cities.

Table 2: Auto Insurance Average Premiums By ZIP Code and Credit History

City	Excellent Credit	Fair Credit	Poor Credit
Seattle – 98115	$627.65	$855.50	$1,137.80
Vancouver – 98682	$545.35	$741.65	$983.80
Kennewick – 99336	$438.65	$589.35	$775.55
Pasco – 99301	$442.85	$593.00	$779.85
Kenmore – 98028	$598.00	$815.70	$1,082.10
Dayton – 99328	$386.85	$517.30	$680.40
Yelm – 98597	$491.35	$667.20	$883.15

In 2015 Consumer Reports conducted a similar study. They found that the average premium for a Washington driver purchasing full coverage insurance with a perfect driving record but poor credit was $2,563 per month, which amounted to a $1,536 penalty compared to drivers with a perfect driving record and excellent credit. Shockingly the safe driver with poor credit paid $847 more on average than a Washington driver with excellent credit and a DWI (driving while intoxicated) conviction.[2]

How the Use of Credit History Disproportionately Burdens People of Color

When auto insurers use credit history in insurance underwriting and pricing, data show that people of color will face a disproportionate share of higher priced policies. The 2019 study "The Geography of Subprime Credit" published by the Federal Reserve Bank of Chicago, for example, found that "[p]laces with lower credit scores show more signs of economic adversity and reflect patterns of segregation." The authors also reported a "disproportionate representation of black households in the most subprime neighborhoods."[3]

In 2021 the Urban Institute found that median credit scores reveal persistent racial disparities, with scores for white Americans significantly higher than credit scores for Black, Hispanic, and Native American consumers.[4] A 2013 Federal Reserve Bulletin illustrated that among home

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

[3] "The Geography of Subprime Credit." By Taz George, Robin Newberger, and Mark O'Dell. ProfitWise News and Views. No. 6, 2019. Available at https://www.chicagofed.org/publications/profitwise-news-and-views/2019/the-geography-of-subprime-credit.

[4] "Credit Health During the COVID-19 Pandemic." Urban Institute. February 25, 2021. Available at https://apps.urban.org/features/credit-health-during-pandemic/.

buyers, only 5.4% of white Americans had a credit score below 620, while 21.4% of Black Americans purchasing homes had a credit score below 620.[5]

These credit history disparities are connected to systemic biases against Black, Indigenous, and Latinx communities and long-standing structural hurdles to achieving financial stability for communities of color. When credit history is used to construct credit-based insurance scores for underwriting and rating auto insurance, the result is higher auto insurance premiums for drivers of color with perfect safety records. Even the discredited 2007 Federal Trade Commission report on credit-based insurance scores[6] acknowledged this fact, as shown in its Figure 12, copied below. Here, the FTC shows that credit-based insurance scores for African Americans and Hispanics were not evenly distributed but weighted heavily toward the lower scores that result in higher premiums.[7]

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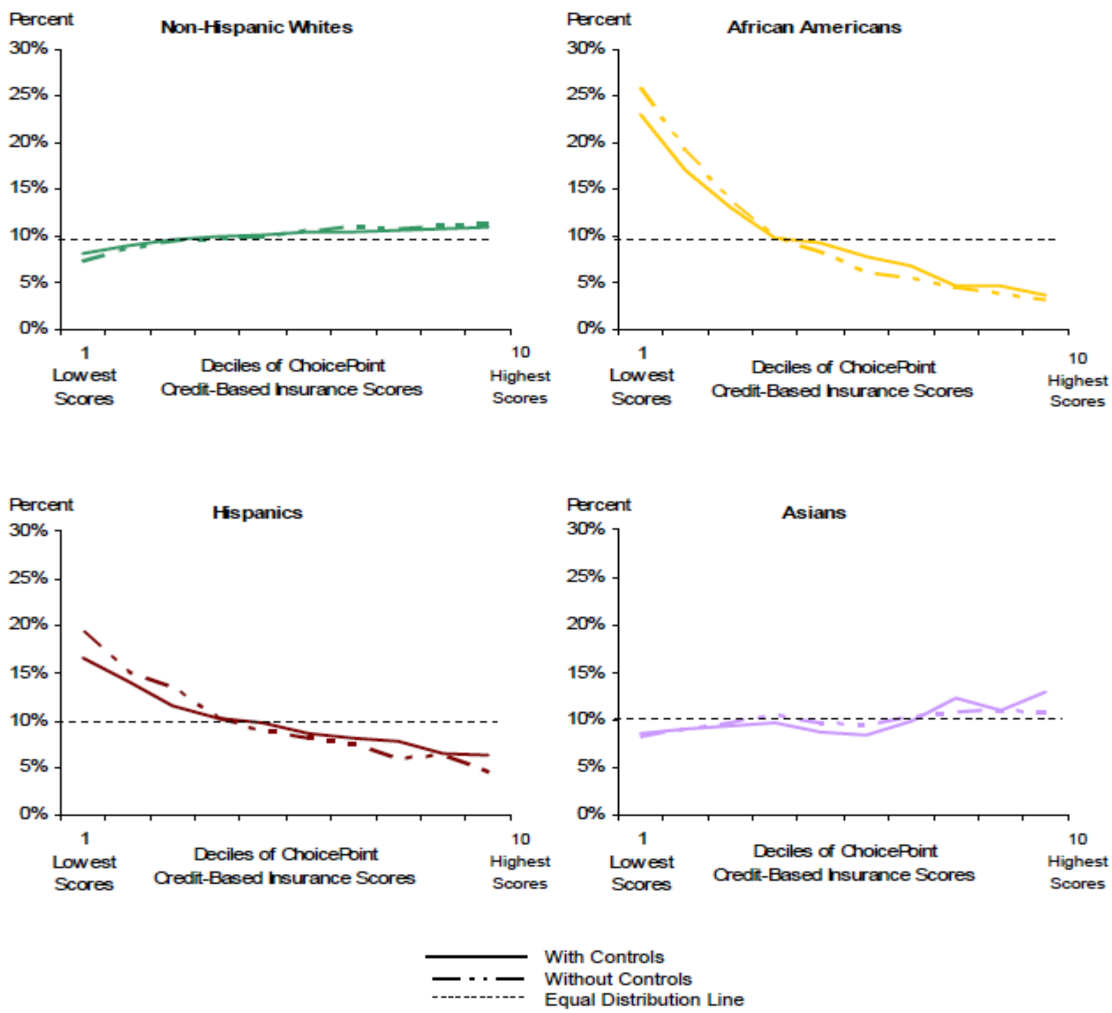
[5] "Mortgage Market Conditions and Borrower Outcomes: Evidence from the 2012 HMDA Data and Matched HMDA–Credit Record Data. " By Neil Bhutta, Glenn Canner, Shira Stolarsky, and Madura Watanagase. (Table 14a) Federal Reserve BULLETIN Vol. 99, No. 4. November 2013. Available at https://www.federalreserve.gov/pubs/bulletin/2013/pdf/2012_hmda.pdf.

[6] In a dissenting opinion concerning the report, FTC Commissioner Pamela Harbour explained, "Had this report been based on the real insurance marketplace – using actual, verifiable data on individual policyholders, from a broad cross-section of insurance companies – reliable answers might have emerged. Staff made their best, good-faith efforts to work with the data they were given. But in the end, I cannot endorse this report due to my grave methodological concerns. This study fell short of the rigorous research and data-collection standards to which the Commission usually adheres."

[7] "Credit-Base Insurance Scores: Impacts on Consumers of Automobile Insurance." Federal Trade Commission. 2007. Available at 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.

FIGURE 12.

Distribution of Scores by Race and Ethnicity, After Controlling for Age, Gender, and Neighborhood Income



Regardless of the debate about the appropriateness of credit-based insurance scores or their value to insurers eager to segment customers, the data unequivocally show that the use of credit history and credit-based insurance scores in pricing forces people of color to pay higher premiums for the same coverage than their white peers.

Consumer Federation of America

Proposed Temporary Ban on the Use of Credit for Insurance is Necessary to Address Amplification of Credit History's Unfair Discrimination and New Forms of Unfair Discrimination Created by the Pandemic

In addition to state law requiring that insurance rates be neither excessive nor inadequate, to avoid windfall profits (excessive) and to avoid insurers being unable to pay claims (inadequate), state law requires insurers' practices – underwriting, pricing, claims settlement – to not be unfairly discriminatory. Unfair discrimination should be understood in two ways. The first is actuarial – similarly-situated consumers must be treated similarly. That means there must be a valid statistical and actuarial basis for treating consumers differently for underwriting, pricing and claims settlement. The second type of unfair discrimination is protected class discrimination – discriminating on the basis of race, religion or national origin, for example, regardless of any actuarial basis. Below we explain why the proposed rules are necessary to combat the way the pandemic has led to both types of unfair discrimination due to the use of credit history by insurers.

I. *The proposed rules are necessary to block the actuarial unfair discrimination resulting from pandemic-related laws and practices that undermine the validity of credit-based insurance scoring models.*

As the pandemic unfolded last year, Congress, Washington State, and several municipalities took action to help consumers, businesses, and communities. Among other protections, these efforts gave consumers opportunities to avoid the negative credit impacts that would normally accrue due to certain personal financial actions, such as missing a mortgage payment.

On the similarly-situated (actuarial) basis for unfair discrimination, there can be no dispute that key consumer protections related to consumer credit reporting in the CARES Act have made insurance credit scoring unfairly discriminatory. Among other provisions of the CARES Act is the requirement for credit bureaus to report any borrower who has gotten some form of forbearance by a lender as current on their loan.[8]

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[8] "Statement on Supervisory and Enforcement Practices Regarding the Fair Credit Reporting Act and Regulation V in Light of the CARES Act." Bureau of Consumer Financial Protection. April 1, 2020. Pg. 2. CFPB Statement: Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, § 4201 (2020) (stating that, with certain exceptions, "if a furnisher makes an accommodation with respect to 1 or more payments on a credit obligation or account of a consumer, and the consumer makes the payments or is not required to make 1 or more payments pursuant to the accommodation, the furnisher shall—(I) report the credit obligation or account as current; or (II) if the credit obligation or account was delinquent before the accommodation—(aa) maintain the delinquent status during the period in which the accommodation is in effect; and (bb) if the consumer brings the credit obligation or account current during the period described in item (aa), report the credit obligation or account as current"). In addition, section 3513 of the CARES Act addresses the furnishing of certain student loans for which payments are suspended. Available at https://files.consumerfinance.gov/f/documents/cfpb_credit-reporting-policy-statement_cares-act_2020-04.pdf.

Forbearance can take a variety of forms, including permitting borrowers to miss required payments without penalty. Millions of borrowers have taken advantage of forbearance, although many hundreds of thousands or millions more who were eligible for forbearance did not seek this assistance. The Urban Institute's Housing Finance Policy Center has tracked forbearance activity, which peaked at 6.4% of the tens of millions of loans insured or owned by Fannie Mae and Freddie Mac.[9] The Urban Institute has also concluded that delinquent homeowners in neighborhoods of color are less likely to use or access forbearance protections.[10] The Brookings Institution reported that a survey of low- and moderate-income homeowners found 40% of respondents were unaware of forbearance programs.[11]

It is straightforward to show how the CARES Act provisions lead to unfair discrimination with credit-based insurance scores. Consider two similarly-situated consumers – identical in all respects, including missing several monthly mortgage payments – but one has sought and obtained forbearance while the other has not. Although similarly situated, the credit report of the consumer who did not get forbearance shows delinquency while the credit report of the consumer who got forbearance shows no delinquency. Pre-pandemic, both consumers would have suffered higher premiums due to delinquencies lowering the insurance credit scores. Post-pandemic insurance credit scoring will cause the first (no forbearance) consumer to be charged more because of a lower credit score even though the consumers are similarly situated, a hallmark of unfair discrimination in insurance.

Now consider two consumers who are not similarly situated. These two consumers are identical except that one has remained current on loan payments during the past 12 months and the other has failed to make a number of payments. The consumer who has failed to make a number of payments has obtained forbearance with the result that, despite the missed payments, this consumer's credit reports show the consumer as current with payments. Pre-pandemic, pursuant to the credit scoring model undergirding the insurers' rating algorithm, these consumers would have received different credit scores and different insurance premiums because of the different credit scores. Post-pandemic, these consumers now receive the same credit score because the credit data used to generate the score has been compromised by government order. Unfair discrimination has occurred because two consumers who the credit scoring models determine should be treated differently are now treated the same. Using credit-based insurance scores with the flawed data causes two consumers to be treated the

[9] "Housing Finance at a Glance: A Monthly Chartbook." Urban Institute. February 2021. Available at https://www.urban.org/sites/default/files/publication/103746/housing-finance-at-a-glance-a-monthly-chartbook-february-2021_0.pdf.

[10] "Delinquent Homeowners in Neighborhoods of Color Are Less Likely to Be Protected by Forbearance." Michael Neal and Caitlyn Young. Urban Institute. December 2, 2020. Available at https://www.urban.org/urban-wire/delinquent-homeowners-neighborhoods-color-are-less-likely-be-protected-forbearance.

[11] "Low to Moderate-Income Families Are Losing Ground: How to Save Their Homeownership Dreams." Makada Henry-Nickle, Tim Lucas, Radha Seshagiri, and Samantha Elizondo. Brookings Institute. June 24, 2021. Available at https://www.brookings.edu/blog/how-we-rise/2021/06/24/working-class-families-are-losing-ground-how-to-save-their-homeownership-dreams/.

same even though the two consumers are not similarly situated. This unfair discrimination results solely from the now-flawed credit-based insurance scores.

Further, on an actuarial basis, the ability of consumer credit information to predict claims has been severely compromised. Economic conditions changed dramatically during and after March 2020. Unemployment skyrocketed as businesses were shuttered and certain industries – personal services, travel and tourism – were particularly impacted. Predictive models, including credit-based insurance scoring models, are developed based on historical data – the data are mined to see what factors are most predictive of a particular outcome. If the training data are biased, incorrect, incomplete, or, as with the current situation, not representative of the future experience, the model will reflect and perpetuate the bias in the data. In the case of insurance credit scoring, historical data will not reflect the current and near future credit experience of many consumers who have been laid off, whose business has closed, or who have major medical bills or lost family income after a death due to COVID-19, among other reasons.

Stated simply, even if one assumed that insurance credit scoring had a sound actuarial basis prior to March 2020, it is clear that the actuarial basis no longer held after March 2020.

II*. The proposed rules are needed to address the disproportionate financial harm the pandemic has caused in communities of color that will exacerbate the racial disparities associated with credit-based insurance scores.*

The proposed regulation recognizes "the disproportionately negative economic impact the coronavirus pandemic has had on communities of color" as a central reason for banning the use of credit history. As reported by the Joint Center for Housing Studies of Harvard University,

While hardships caused by COVID-19 have affected almost all Americans, these impacts are felt unequally. Black and Hispanic households have been much more likely not only to contract COVID-19, but also to suffer from lost income and face housing insecurity as a result of the pandemic.[12]

As this study also reports, "Minority homeowners were also less likely to receive a deferment than white homeowners." This means that the credit relief offered either by state and federal laws or voluntary actions of credit reporting private entities provided less protection to the credit histories of Black and Brown Americans during the pandemic. For those who did receive protection and avoided some negative reports, the phasing out of deferments and credit reporting moratoria will also hit the credit histories of communities of color harder, as these communities experience higher levels of job loss and face increased likelihood of foreclosure

[12] Cornelissen, S., & Hermann, A. (2020). A Triple Pandemic? The Economic Impacts of COVID-19 Disproportionately Affect Black and Hispanic Households. Joint Center for Housing Studies of Harvard University. July 7, 2020. Available at https://www.jchs.harvard.edu/blog/a-triple-pandemic-the-economic-impacts-of-covid-19-disproportionately-affect-black-and-hispanic-households.

and eviction. Without the proposed rules, the use of credit in the wake of the pandemic will worsen the racial disparities discussed above that are already inherent in credit-based insurance scoring.

The Proposed Rules Will Help Consumers Facing Hardship and Declining Credit

The pandemic caused widespread disruptions in society and the economy. Businesses closed or reduced hours, workers lost jobs, and many consumers have fallen behind on payments due to the pandemic's many intersecting challenges. Theoretically consumers credit information provided insurers with a measurement of customers' relative risk level. This link was always tenuous and the pandemic has completely severed the connection. It is neither logical nor just for consumers to be charged higher premiums due to poor credit, if their credit declined because of an historic and unprecedented pandemic. Nor should other customers with similar risk profiles get discounted rates simply because the pandemic did not harm their credit, or they were able to access certain tools to mask their credit risk.

Additionally, consumer credit protections in the CARES Act will expire, likely leading to a large volume of negative credit corrections. An October 2021 survey conducted by National Public Radio, the Robert Wood Johnson Foundation, and the Harvard T.H. Chan School of Public Health found that:

- 38% of households across America report facing serious financial problems in the past few months;
- 19% of households report losing all their savings during the COVID-19 pandemic and not currently having any savings to fall back on;
- At the time the Centers for Disease Control and Prevention's eviction ban expired, 27% of renters report they had serious problems paying their rent in the past few months;
- 24% of employed adults report they have a worse job situation now compared to before the pandemic.[13]

CFA supports the regulation that OIC has proposed. The three-year prohibition on the use of credit history by insurers is critical to preventing the illegal unfair discrimination that results from the use of credit in the wake of a catastrophic pandemic, and we urge a quick adoption of the rule.

Please contact us at douglasheller@ymail.com with any questions.

Sincerely,

[13] "Household Experiences in America During the Delta Variant Outbreak." National Public Radio. October 2021. Available at https://media.npr.org/assets/img/2021/10/08/national-report-101221-final.pdf.

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