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Re: Auto Rating Fairness Rulemaking Advisory Committee's Collection of Information on Various Factors in Auto Insurance

The Consumer Federation of America (CFA),[1] Oregon Consumer Justice, and the Oregon Consumer League are encouraged by the plan of the Oregon Division of Financial Regulation (Division) to collect data from auto insurers doing business in the state as part of your rulemaking to assess and ensure fairness in insurers' rating models. Over the decades, CFA has tested insurers' rates and identified several mechanisms that appear to result in pricing that disproportionately harms communities of color, and we believe the work of your Auto Rating Fairness Rulemaking Advisory Committee marks a significant step in the direction of assessing and addressing unfair outcomes that may be found in the Oregon auto insurance market.

In this letter we offer our initial thoughts as to the data collection requirements that we believe would help the Division meet its goal of determining if "current rating models accurately reflect the risk of communities of color or whether they potentially result in discrimination."

Insurers use a range of socioeconomic and other non-driving factors to price auto insurance policies. Using personal and financial characteristics that have nothing to do with

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[1] Found in 1968, CFA is an association of consumer organizations that advances consumer interests through research, advocacy, and education. For decades, we have worked on conducting research on insurance markets, making insurance more affordable and accessible, and combatting unfair discrimination. Our Director of Insurance, Douglas Heller, is a member of the Federal Advisory Committee on Insurance and a member of the California Automobile Assigned Risk Plan Advisory Committee, which, among other roles, oversees the state's innovative Low Cost Auto Insurance Program for low-income drivers. Our Research and Advocacy Associate Michael DeLong is a funded Consumer Representative at the National Association of Insurance Commissioners (NAIC) and a member of the Nevada Advisory Committee on Property and Casualty Insurance.

driving safety or risk of loss makes it impossible for many consumers to get the best price for this state-mandated purchase despite a lifetime of demonstrated safe driving. Additionally, and relevant to the work of the Rulemaking Advisory Committee, the use of these factors also creates a market in which customers will pay different premiums for the same coverage either directly on the basis of a protected class (as with the use of gender and marital status) or indirectly through the inclusion of factors that disproportionately penalize people of color. However, the Division has not previously conducted its own independent review of the outcomes of auto insurers' rating models to assess the extent to which these non-driving and socioeconomic factors result in discrimination.

In order to determine the extent of this discrimination and its resulting effects on communities of color, it is essential that the Division possess accurate information and obtain a comprehensive picture of how these rating factors influence auto insurance availability and affordability. In addition, the Division should adopt a methodology for testing the rating models to assess the extent to which premiums calculated by these models differ according to the race, gender, marital status, or other protected class status of each company's customers.

Because Oregon requires all drivers to purchase and maintain auto insurance, the Division has a responsibility to ensure that coverage is affordable and that consumers do not experience unfair discrimination. Based on CFA's extensive research of insurance pricing practices, we are deeply skeptical of assertions made by the insurance industry that their pricing models do not produce outcomes that disproportionately penalize people of color. One of the most significant sources of this penalty stems from insurers' use of credit information, in the form of credit-based insurance scores. A 2023 CFA report found that in 2020, Oregon drivers with a clean driving record and excellent credit paid an average premium of $600, while Oregon drivers with the same driving history and fair credit paid a premium of $911, while safe Oregon drivers with poor credit paid $1,271 for the same coverage—a 112% credit score penalty.[2] There is no shortage of data confirming that credit scores differ significantly based on the race and ethnicity of customers,[3] meaning that credit-based insurance scores will lead to auto insurance premiums that follow those disparities. We also note that academic research indicates that most Americans do not believe auto insurers should include the use of credit scoring in pricing. Indeed, even when told to assume that there is a linkage between credit scoring and risk, Americans reject its use, according to a 2024 RAND study:[4]

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[2] "The One Hundred Percent Penalty: How Auto Insurers' Use of Credit Information Increases Premiums for Safe Drivers and Perpetuates Racial Inequality." By Douglas Heller and Michael DeLong. The Consumer Federation of America. July 31, 2023. Available at https://consumerfed.org/wp-content/uploads/2023/07/Official-CFA-Credit-Score_2023-FINAL-REPORT.pdf.

[3] "Young Adults' Credit Trajectories Vary Widely By Race and Ethnicity." By Thea Garon. Urban Institute. August 22, 2022. Available at https://www.urban.org/urban-wire/young-adults-credit-trajectories-vary-widely-race-and-ethnicity.

[4] "Public Attitudes Toward Risk-Based Pricing and Risk-Sharing in Insurance." By Lloyd Dixon and James M. Anderson. Santa Monica, CA: RAND Corporation, 2024. Available at https://www.rand.org/pubs/research_reports/RRA2872-1.html.

> In the automobile (hereafter, auto) insurance setting, more than 80 percent support higher premiums for drivers with more speeding tickets (see bottom row of Figure S.3). However, when survey respondents were directed to assume that low credit scores were associated with higher accident rates, few supported higher insurance premiums for this group—perhaps because respondents did not believe that the link between driving behavior and credit scores is sufficiently direct or felt that credit scores are often driven by factors outside the individual's control. (Dixon & Anderson, 2024)

It is difficult to find accurate and comprehensive information on premium penalties resulting from rating factors. For the previously mentioned report on credit scores, CFA purchased auto insurance premium data from a vendor of insurance data. For measuring the impact of other socioeconomic and other non-driving rating factors, CFA has conducted online tests and obtained premium quotes from a number of insurers. From these studies, we conclude that the penalties resulting from these factors are both significant and usually similarly factors are both significant and usually similarly aligned with race and ethnicity, and often with marital status as well. A consumer may pay a combination of several of these non-driving rating factor surcharges that amplify the disparities faced by people of color in the auto insurance market. Companies may charge one penalty because of the customer's education level, a second penalty because of their job title, a third penalty because of their gender and marital status, a fourth penalty because they rent their home instead of owning it, a fifth because they previously purchased only a minimum limits policy, had a lapse in coverage, or were a customer of a non-standard carrier, and a final, large penalty because of their credit information. Each of these factors are proxies, in varying degrees, for the race, ethnicity, and national origin of consumers.

Below, we provide a list of rating factors we have seen used by insurers that may lead to unfairness in the market. However, there may be other factors beyond these with similar qualities of being disconnected from driving safety and proxies for protected class status that insurers use or might use if faced with proscriptions against some of the factors we have identified. As such, we think a critical piece of this effort should be to develop a mechanism for testing insurance companies' pricing models to determine if the outcomes of those models, when taken as a whole, result in the kind of disparities on a protected class basis that the Division aims to prevent. In this letter, we do not provide suggestions for how to conduct that kind of model testing, but we would be pleased to work with the Division and share approaches that have been discussed in other states and other sectors.

Based on our research, the following are common rating factors that tend to disproportionately penalize people of color or customers on the basis of another protected class status:

1) Credit-based insurance scores or other uses of credit information
2) Occupation or job title and employment status
3) Education level
4) Marital status

5) Gender
6) Homeownership status
7) Previous lapses in insurance coverage
8) Prior coverage limits
9) Prior insurance carrier
10) ZIP code or territory

We note that ZIP code or territory has likely been an issue of concern with respect to fairness, discrimination, and redlining in the auto insurance market for longer than any of the other factors in the list. Despite it being widely understood by consumers as an auto insurance factor (as opposed to several of the other non-driving factors, which most consumers do not know are used in premium setting), RAND found in its aforementioned report that only 19% of Americans support the use of a customer's neighborhood as a factor in setting their insurance premium.

The research reveals that Americans understand that the purpose of auto insurance pricing is to pool risk; it is not supposed to slice and dice customers into narrow groupings that often reflect racial, ethnic, and other disparities in society. While CFA's research guides us to be deeply troubled by the pricing models of many insurers, the Division's rulemaking does not presume that any factors are inherently problematic. You are instead looking to collect data and, we hope, to develop model testing standards that will guide your future work to ensure marketplace fairness for all Oregonians who rely on the insurance market to meet their financial responsibility, protect themselves financially, and protect drivers and others while on the road.

We look forward to working with the Division on this important effort. Please contact us at mdelong@consumerfed.org with any questions.

Sincerely,

Consumer Federation of America
Oregon Consumer Justice
Oregon Consumer League