New Economy Project

July 3, 2017

Stephen Doody
Deputy Superintendent for Property and Casualty Insurance
New York State Department of Financial Services
One State Street
New York, NY 10004

Re: Proposed rule on Private Passenger Motor Vehicle Insurance Multi-Tier Programs

Dear Mr. Doody:

For years, car insurance companies have systematically discriminated against New Yorkers of color, lower-income New Yorkers, immigrants, and women, overcharging them for car insurance on the basis of non-driving-related factors, including their occupations and education levels, as well as where they live, their credit histories, and other irrelevant factors. People's jobs and educational attainment reflect longstanding racial and gender disparities, including racial and gender-based wealth inequality and inequitable access to living-wage jobs and education. This information, moreover, bears no reasonable relationship to people's actual driving ability or risk. Using this information, therefore, to price car insurance is manifestly unfair and discriminatory. It means that low-wage workers and people without college degrees pay more for car insurance – irrespective of their actual driving history or ability.

New Economy Project appreciates the opportunity to comment on rules proposed by the New York State Department of Financial Services (DFS) to address this pernicious form of race and gender discrimination. We are extremely pleased to see New York taking action to address this problem, and thank Governor Andrew M. Cuomo and Superintendent Maria T. Vullo for their leadership in this area. New York will become just the third state in the country to address this form of discrimination.

<u>The final rule should allow no exceptions to the ban on car insurance companies' use of education and occupation data.</u>

With these rules, New York State recognizes that these non-driving related factors should play no part in determining the price of car insurance. Yet the proposal provides for possible exceptions to the rules, if car insurance companies can meet certain specified criteria. We vehemently urge New York to issue final rules without these exceptions, which contradict the compelling public policy rationale for the rules in the first place.

Here's why:

- New York State requires all drivers to maintain car insurance, and the reality is that many New Yorkers, even in New York City, must rely on cars for their livelihoods, to get to school, and for other vital purposes. Car insurance companies' persistent use of people's jobs and education information to price car insurance further burdens New Yorkers of color, women, and lower-income immigrants and other New Yorkers, who already disproportionately lack access to reliable public transportation.[1]

- This practice has a clear disparate impact on protected classes and lower-income New Yorkers, and car insurance companies have offered no plausible explanation for their use of the data. Many groups, including New York Public Interest Research Group, Consumers Union and Western New York Law Center, have clearly documented the harmful impact of this form of discrimination, as well as discrimination based on car insurers' use of other socioeconomic information.

- Educational attainment and occupation reflect long-standing social and economic inequities—for example, white New Yorkers are about twice as likely to have a college degree as black or Latino New Yorkers. In its investigation, DFS found that insurance companies failed to prove that their use of these factors was not unfairly discriminatory, and, in fact, "insurers failed to provide...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."

If DFS insists on including unfair and unwarranted exceptions in the final rule, it should, at a minimum, strengthen the standards for exceptions.
Again, we urge DFS to issue a strong final rule that bans insurance companies from using occupation or education data, with no exceptions**.** If DFS does allow insurance companies to request exceptions to the ban, however, it is critically important that DFS require car insurance companies that seek to use education and occupation data to prove that they are not using it in any way that would disadvantage or discriminate against New Yorkers. We fully agree with the comments submitted by Consumer Federation of America, including that these companies' rate filings and tiering plans should be subject to close, ongoing supervision, as well as to public hearings.

Although DFS should issue a final rule that prohibits car insurance companies from using occupation data, if DFS maintains the exception for occupation data in the final rule, we would urge DFS to strengthen the protections required for insurance companies' use of the data. On one hand, the following proposed standards would help to provide needed protections:

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[1] Neighborhood redlining and disinvestment not only perpetuate the racial wealth gap, but they are also related to lack of access to reliable, affordable public transportation for many people living in communities of color and lower-income neighborhoods—in urban, rural, and suburban communities alike.

- Insurance companies must show that occupation has a reasonable relationship with driving ability or habits and a predictable influence on risk of losses;

- Any differences in prices must be commensurate with differences in loss costs; and

- Occupation may not serve as a direct or indirect proxy for income. DFS should, however, strengthen this requirement by also requiring insurance companies to prove that occupation is not serving as a proxy for race or any other protected class.

Again, if DFS insists on including exceptions in its final rule, there are several standards in the proposed rule that would fail, on the other hand, to adequately protect New Yorkers from discrimination:

- First, DFS should strengthen protections for homemakers, retirees and unemployed New Yorkers. DFS should ensure, for example, that people in these categories are not penalized based on their income, and that the final rules do not prevent them from receiving appropriately-priced car insurance based on their actual driving habits.

- Second, the proposed rule includes provisions that would require insurance companies to notify their customers how to report changes in their education or occupation that could reduce their premiums. This opportunity is important, so long as reported changes do not result in higher insurance costs. The proposal to require the DFS Superintendent to approve the annual notices will help ensure that drivers understand how to act on the notices to lower their premiums. DFS should ensure that all notices are clear and easily understandable, and require insurance companies to print notices in eye-catching fonts and colors to increase the chances that New Yorkers will see and act on the notices.

New York must continue to fight discrimination in insurance pricing.
New York should do everything it can to root out institutional discrimination in our financial services system, and a strong final rule, with no exceptions, will go a long way to eliminating an especially insidious practice in the pricing of car insurance. New Yorkers should be able to take for granted that they are securing fairly-priced car insurance, at prices that reflect their actual driving history and other driving-related factors – not their occupations or levels of educational attainment.

Indeed, occupation and education information are not the only non-driving-related factors that car insurance companies use to price insurance unfairly. A 2017 research report by *ProPublica* and *Consumer Reports* shows that car insurance companies unfairly charge good drivers who live in communities of color more for car insurance than good drivers who live in predominantly white neighborhoods. They found a similar redlining pattern, even when people living in predominantly white neighborhoods are riskier drivers than their counterparts in neighborhoods of color.

This neighborhood-based discrimination is compounded by car insurance companies' use of credit history to price insurance. As people's credit histories largely reflect existing inequities, including structural barriers to education and jobs, as well as bank redlining, and predatory lending and debt collection —using credit histories to price car insurance disproportionately harms people of color. According to Consumers Union, good drivers with damaged credit are charged twice as much for car insurance as otherwise identical drivers who have excellent credit – yet another way that car insurance companies effectively gouge people of color. Insurance companies also unfairly penalize unmarried people, renters, and women.

New York should require insurance companies, when setting prices, to prioritize a person's actual driving history and ban car insurers' use of socioeconomic data. We look forward to working with DFS to end the discriminatory use of other demographic and economic information, such as credit history, marital status, and gender. Other states, such as California, that have taken action and require insurance companies to base their pricing decisions primarily on driving-related information, have succeeded in ensuring that car insurance is fairly priced and widely available.

Thank you for the opportunity to comment on this important rulemaking. The car insurance industry has gouged New Yorkers of color, women, immigrants, and low-income New Yorkers for far too long, and we urge DFS not cave to industry pressure, as it crafts the final rule. Indeed, the proposed rule is a key step to addressing institutional discrimination and removing unwarranted barriers to economic opportunity for so many New Yorkers.

Sincerely,

New Economy Project