



April 14, 2022

Commissioner Marlene Caride
New Jersey Department of Banking and Insurance
20 W State St
Trenton, NJ 08625

Re: Authority to Ban Credit Information, Education, and Occupation as Rating Factors in Auto Insurance Pricing and Underwriting

Executive Summary

The New Jersey Department of Banking and Insurance (DOBI) has the authority to prohibit the use of consumer credit information, education level, and occupation in auto insurance pricing and underwriting. Auto insurers' employment of these non-driving related socioeconomic factors results in unfair and harmful discrimination, increasing costs for consumers. These practices also disproportionately impact African-American and Latino consumers, perpetuating and reinforcing systemic racism. The situation has reached the point where auto insurance premiums are often a significant financial burden and even unaffordable for many consumers.

This memorandum makes the following points:

- DOBI possesses broad authority to ban these factors from auto insurance markets.
- As the chief regulator of insurance in New Jersey, DOBI must ensure that auto insurance is affordable and consumers do not face unfairly discrimination.
- Actions taken by other Insurance Departments—California, Massachusetts, New York, Nevada, and Washington State—show there is ample precedent for these consumer protections.
- We, the undersigned community, consumer and civil rights advocates and insurance company leaders, urge DOBI to prohibit the use of consumer credit information, education level, and occupation in auto insurance pricing and underwriting. This policy will make insurance more affordable for consumers, help combat systemic racism, and end unfair discrimination in the auto insurance market.



Background

New Jersey, along with every other state except New Hampshire, requires drivers to carry and maintain auto insurance.¹ State regulators are therefore responsible for ensuring that this product is affordable and that consumers do not experience unfair discrimination. Insurance should be fairly priced based on someone's driving behavior, not on socioeconomic factors that have nothing to do with their driving record.

However, auto insurance is not fairly priced. In many states, including New Jersey, auto insurers use numerous non-driving related factors, including consumer credit information/history, education, and occupation, to unfairly discriminate against consumers and charge them higher premiums. These factors are used to favor wealthier consumers, who have more disposable income to purchase additional insurance products, and weed out lower-income consumers. As a result low- and moderate-income drivers wind up paying higher auto insurance premiums than the risk-level indicated by their driving history and experience. The use of these factors raises rates on consumers who are good drivers but have less education, lower paying jobs, or poor credit. For many historic and structural reasons, the application of these characteristics in underwriting and rating disproportionately harm people of color.

Most consumers are unaware that auto insurers use consumers' education levels, occupation, and credit information to set auto insurance rates. According to a 2005 survey, two-thirds of consumers did not know that credit history affects their insurance premiums.² A 2016 survey found that 69% of consumers believe that the use of someone's education in car insurance pricing is unfair, and 63% said it was unfair for insurers to use someone's job.³ ⁴ Similarly, 46% of consumers thought it was very unfair

¹ "Insurance Requirements." New Jersey Motor Vehicle Commission. Accessed on March 24th, 2022. Available at

<https://www.state.nj.us/mvc/vehicles/insurancerequirements.htm#:~:text=All%20drivers%20in%20New%20Jersey,registering%20it%20with%20the%20MVC.>

² "Credit Reporting Literacy: Consumers Understood the Basics but Could Benefit from Targeted Educational Efforts." GAO-05-223. Mar 16, 2005. Available at <https://www.gao.gov/products/GAO-05-223>.

³ "Major Auto Insurers Raise Rates Based on Economic Factors" (ORC International survey commissioned by Consumer Federation of America). By Douglas Heller and Michelle Styczynski. June 2016. Available at https://consumerfed.org/wp-content/uploads/2016/06/6-27-16-Auto-Insurance-and-Economic-Status_Report.pdf.

⁴ "Credit Scores and Car Insurance: How Unfair Pricing Practices Discriminate Against Millions of Drivers." Root Insurance. Available at



or somewhat unfair to use credit scores for auto insurance pricing, compared to only 36% who thought it was very fair or somewhat fair.⁵

The Harmful Effects of Credit Information, Education, and Occupation on Consumers' Auto Insurance Premiums

When auto insurers use someone's credit information, education level, or job in setting auto insurance rates, consumers pay substantially higher premiums even if they have perfect driving records. Below are several studies demonstrating this discrimination and its impact.

In late 2020 and early 2021, Consumer Reports (CR) investigated how auto insurers were using education and occupation to set premiums.⁶ CR requested 869 unique auto insurance quotes from nine different companies and studied 21 ZIP codes in six states—Illinois, Louisiana, Minnesota, New Jersey, Oregon, and Washington—and the District of Columbia. The quotes were for a hypothetical 30 year old female driver who owns her 2016 Toyota Camry, has a clean driving record, and is shopping for her state's minimum required coverage. The only factors changed were her education level and job title.

CR's investigation found that three major insurance companies—GEICO, Liberty Mutual, and Progressive—used education to charge consumers higher rates. GEICO and Progressive also charged consumers more based on their occupation. Liberty Mutual charged drivers with less education \$62, or 6.3% more annually. Progressive charged them \$101, or 12.9% more annually. And GEICO charged drivers with less education \$115 more, or 16.4% annually.

Progressive also charged drivers with low-paying jobs \$31, or 3.8% more annually. GEICO charged drivers with low-paying jobs \$97, or 13.5% more. CR found that

https://cdn.brandfolder.io/5S4BNCY2/at/698pbtzrh95kf8p8gkqcr5/RootInc_DroptheScore_ConsumerReport.pdf.

⁵ "Which Data Fairly Differentiate? American Views on the Use of Personal Data in Two Market Settings." By Barbara Kiviat. Sociological Science, 10.15195/v8.a2, January 13, 2021. Available at <https://sociologicalscience.com/articles-v8-2-26/>.

⁶ "Why Your Education and Job Could Mean You're Paying Too Much for Car Insurance." By Kaveh Waddell. Consumer Reports. January 28, 2021. Available at <https://www.consumerreports.org/car-insurance/why-your-education-and-job-could-mean-youre-paying-too-much-for-car-insurance-a3116553820/>.



Progressive practiced this unfair discrimination based on education in all six states and the District of Columbia, and it discriminated based on occupation in five states—Illinois, Louisiana, Minnesota, New Jersey, and Oregon.

In 2020, Consumer Federation of America (CFA) also conducted an analysis of credit information and auto insurance premiums charged to New Jersey drivers by New Jersey's largest auto insurers. The analysis found that consumers with excellent credit pay an average annual premium of \$842, but consumers with fair credit pay \$1,384 on average, and consumers with poor credit pay \$2,153—a 156% increase compared to those with excellent credit.

In many parts of New Jersey, discrimination based on credit information is more severe than the statewide average and drastically drives up auto insurance premiums. In West Orange, drivers with excellent credit are charged an average premium of \$979, drivers with fair credit are charged \$1,621, and drivers with poor credit must pay \$2,540 on average. In Newark, discrimination has an even bigger impact. Consumers with excellent credit pay \$1,238 on average, consumers with fair credit pay \$2,120, and consumers with poor credit pay \$3,377 on average.⁷

By giving so much emphasis to credit history, New Jersey's auto insurance pricing practices allow some of the state's riskiest drivers to pay less in premiums than good drivers with poor credit. A 2015 analysis by Consumer Reports based on price quotes from every New Jersey ZIP Code found that *a good driver with poor credit would actually be charged \$37 more than a convicted drunk driver*.⁸ By subsidizing risky drivers with higher credit scores, New Jersey's pricing policies penalize working class drivers with clean driving records, and disincentivize safe driving behavior.

Furthermore, by allowing insurers to price customers using socioeconomic data for auto insurance pricing, New Jersey is also permitting companies to mark up the price of coverage to make it out of reach for many of the state's residents. According to a 2017

⁷ "New Jersey Auto Insurance Premium Comparisons by City: Data Shows that New Jersey Consumers Pay More for Auto Insurance Based on Credit Scores and ZIP Code." Consumer Federation of America. November 18, 2020. Available at <https://consumerfed.org/wp-content/uploads/2020/11/New-Jersey-Auto-Insurance-Premium-Comparisons-By-City.pdf>.

⁸ "The Truth About Car Insurance: 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>



analysis by the Federal Insurance Office (FIO), auto insurance coverage is not affordable for some 2.3 million New Jerseyans (or 1 out of 4 state residents), who live in low- and moderate-income (LMI) ZIP codes and ZIP codes where most residents are people of color.⁹

The FIO also found that the price of basic liability auto insurance coverage exceeded the federal auto insurance affordability standard (2% of the median household income) in 82 of New Jersey's ZIP codes. In 19 counties, the cost exceeded 5% of median household income. The most negatively impacted counties included Essex County (13 ZIP codes), Union County (13 ZIP codes), Passaic County (10 ZIP codes) Camden County (9 ZIP codes) and Hudson County (7 ZIP codes).¹⁰ These counties are also disproportionately low income.

Use of These Non-Driving Factors Perpetuates and Reinforces Systemic Racism

When auto insurers charge premiums based on non-driving factors like education, occupation, and credit information, it reinforces and perpetuates systemic racism. Because of past and present discrimination African-Americans and Latino Americans are less likely to have graduated from college, more likely to work in lower-paying jobs, and on average have lower credit scores.¹¹

The evidence shows that New Jersey consumers pay different auto insurance premiums based on the demographics of the ZIP codes where they live. Consumers with excellent credit, who live in ZIP codes that have a majority white population, pay an average annual premium of \$790. If they have fair credit, their average premium jumps to \$1,287. And if they have poor credit, their premium rises to \$1,988.

⁹ "Study on the Affordability of Personal Automobile Insurance." Federal Insurance Office, U.S. Department of The Treasury. January 2017. Available at: https://consumerfed.org/wp-content/uploads/2017/01/FINAL-Auto-Affordability-Study_web.pdf. See also: Supporting data: <http://consumerfed.org/wp-content/uploads/2017/01/FINAL-Data-for-2016-FIO-US-Auto-Affordability-Analysis-1.xlsx>. See also: "New Treasury Report Reveals 8 Million Americans Live in Zip Codes Where Auto Insurance is Unaffordable." Consumer Federation of America. January 2017. Available at https://consumerfed.org/press_release/new-treasury-dept-report-reveals-8-million-americans-ny-nj-ct-live-zip-codes-auto-insurance-unaffordable.

¹⁰ Ibid.

¹¹ "Systemic Racism in Auto Insurance Exists and Must Be Addressed By Insurance Commissioners and Lawmakers." Consumer Federation of America. June 17, 2020. Available at https://consumerfed.org/press_release/systemic-racism-in-auto-insurance-exists-and-must-be-addressed-by-insurance-commissioners-and-lawmakers/.



But consumers living in New Jersey ZIP codes that are majority Black pay far higher premiums. If they have excellent credit, they pay an average annual premium of \$1,125. If they have poor credit, their premium increases to \$1,912. And if they have poor credit, their premium increases further to \$3,038. Majority Black ZIP codes pay 49.5% higher premiums than majority white ZIP codes.

Consumers living in majority Latino ZIP codes also pay more for auto insurance. In these areas, people with excellent credit pay an average premium of \$1,127. People with fair credit pay an average of \$1,918. And people with poor credit pay an average premium of \$3,047—49.9% more than people in majority white ZIP codes.¹²

In communities of color, consumer credit scores are generally lower than credit scores in majority white communities. On average 16.3% of New Jersey residents have a subprime credit score. But in communities of color, 27% of people have a subprime score, compared to just 10.7% in majority white communities.¹³

A very large number of New Jersey residents are affected by the use of education and occupation as ratings factors, which raise the prices they must pay to drive to work, to the doctor, to the grocery store, or to drop their kids off at school. According to the U.S. Bureau of Labor Statistics, over 1.7 million workers in New Jersey work in occupational fields where the average annual wage is under \$40,000. In addition only about 39% of the state's residents age 25 or older hold a college degree. Approximately 51% of the state's residents have graduated from high school, and 10% have less than a high school degree.¹⁴

¹² "Insurance Premiums in New Jersey Vary Dramatically By ZIP Code Demographics: Black and Latino Consumers Experience Unfair Discrimination and Pay Higher Rates." Consumer Federation of America. November 29, 2021. Available at <https://consumerfed.org/reports/insurance-premiums-in-new-jersey-vary-dramatically-by-zip-code-demographics/>.

¹³ "Credit Health During the COVID-19 Pandemic." Urban Institute. March 8, 2022. Available at <https://apps.urban.org/features/credit-health-during-pandemic/>.

¹⁴ "These Are New Jersey's Most Educated Towns." NJ.com. March 1st, 2020. Available at <https://www.nj.com/data/2020/03/these-are-njs-most-educated-towns-see-how-yours-stacks-up.html>. See also: Statista, "Educational Attainment in New Jersey 2020." Available at <https://www.statista.com/statistics/306986/educational-attainment-new-jersey/>. See also "New Jersey Releases Latest Performance Figures for High School Graduation." By John Mooney. NJ Spotlight News, March 5, 2020. Available at <https://www.njspotlightnews.org/2020/03/state-releases-latest-performance-figures-for-high-school-graduation/>.



Access to affordable transportation, especially cars, is essential for individuals and families to build income and wealth. The relationship between affordable transportation and social mobility actually appears to be stronger than many other factors in a neighborhood, including crime, elementary school test scores, and the percentage of two-parent families, according to Harvard economist Nathaniel Hendren.¹⁵ Similarly, the Rudin Center for Transportation Policy at New York University has found that having access to a vehicle is often a critical link for workers to increase income and employment opportunity.¹⁶ If auto insurance is unfairly priced because of the use of education, occupation and credit history as rating factors, residents of low-income neighborhoods may confront continued economic isolation from good job opportunities in metropolitan, suburban and rural areas, where many jobs are simply unreachable by alternative means.

The large penalties paid by customers with good driving records but poor credit (\$2,153 on average per a year) do not end in twelve months – but continue year after year. A customer with poor credit could therefore be charged a cumulative \$10,765 extra over five years, relative to more affluent customers with higher credit scores. This obstructs their ability to save, improve their credit, purchase a car, or make a down payment on a home. The cumulative effect of New Jersey’s unfair insurance pricing policies exacerbates and reinforces the racial wealth gap, and magnifies the impact of previous residential redlining which denied residents of color the opportunity to purchase homes and build household wealth. The excessive charges for insurance helps perpetuate a debt trap that will continue to impair the credit standing of low-income households.

Even in good times, credit reports are known to be riddled with errors which are extremely hard for consumers to correct. The Federal Trade Commission (FTC) has estimated that almost 20 percent of consumers have a credit report that contains errors.¹⁷ And as a result of the COVID-19 pandemic, the consumer credit reporting in the United States has become even further disrupted and distorted.

¹⁵ “Transportation Emerges As Crucial to Escaping Poverty.” By Mikalya Bouchard. The New York Times, The Upshot. May 7, 2015. Available at <https://www.nytimes.com/2015/05/07/upshot/transportation-emerges-as-crucial-to-escaping-poverty.html>

¹⁶ “Mobility, Economic Opportunity and New York City Neighborhoods.” By Sara Rudin Center for Transportation, New York University Wagner Center. Updated November 2015. Available at <https://wagner.nyu.edu/files/faculty/publications/JobAccessNov2015.pdf>

¹⁷ “Report To Congress Under Section 319 Of The Fair And Accurate Credit Transactions Act Of 2003.” Federal Trade Commission. 2012. Available at



The federal CARES Act, enacted in the spring of 2020, permitted borrowers to defer payments on mortgages and federal student loans and directed credit reporting agencies to mark them as “current” on their payments for many months and even years. While the payment moratoriums were an essential protection for economically struggling households, the credit reporting provision has created a situation where tens of millions of customers artificially retained high credit scores that are not supported by reliable evidence about their actual payment behavior and financial status, making the continued use of this data measure even more highly questionable than ever before.

At the same time, the pandemic has greatly harmed New Jerseyans, especially low-income people who are more likely to have bad credit. As rent, utility, mortgage and student loan payments resume, low- and moderate-income people and people of color are at very high risk of facing further economic hardship and financial instability. The negative impacts of the pandemic fell most heavily on these groups, many of whom are “essential workers” who work in job categories that auto insurance companies charge higher premiums to.¹⁸ People of color are also more likely to become ill from COVID-19 and suffer from its long-haul effects, putting them at risk of incurring medical and consumer debt.¹⁹ All these pressures are likely to cause the credit scores of low- and moderate-income households to decline even further in the months to come, putting them at risk for paying even higher auto insurance premiums.

DOBI Has the Authority to Prohibit These Factors

The Department of Banking and Insurance has the authority to prohibit insurers from using credit information, education, and occupation in auto insurance pricing and

<https://www.ftc.gov/sites/default/files/documents/reports/section-319-fair-and-accurate-credit-transactions-act-2003-fifthinterim-federal-trade-commission/130211factareport.pdf>.

¹⁸ “Inequalities At Work And The Toll Of COVID-19.” By Rebecca Wolfe, Kristin Harknett, and Daniel Schneider. Health Affairs. June 4th, 2021. Available at

<https://www.healthaffairs.org/doi/10.1377/hpb20210428.863621/full/>.

See also: “The Impact of COVID-19 on Debt and Credit Access in Low-Income Communities.” Prosperity Now. March 2022. Available at <https://prosperitynow.org/sites/default/files/resources/CapitalOne-Impact%20of%20Debt%20During%20COVID-19.pdf>.

¹⁹ “COVID-19 Cases and Deaths by Race and Ethnicity: Current Data and Changes Over Time.” By Samantha Artiga and Latoya Hill. Kaiser Health News, February 22, 2022. Available at

<https://www.kff.org/coronavirus-covid-19/issue-brief/covid-19-cases-and-deaths-by-race-ethnicity-current-data-and-changes-over-time/>. See also: “Researchers Fear People of Color May Be Disproportionately Affected By Long-Haul COVID.” By Elizabeth Cooney. STAT News, May 10th, 2021. Available at:

<https://www.statnews.com/2021/05/10/with-long-covid-history-may-be-repeating-itself-among-people-of-color/>.



underwriting. New Jersey’s insurance code states that rates shall not be “excessive, inadequate, or unfairly discriminatory.”²⁰ The Commissioner is required to enforce this provision, and has the authority to take additional measures to do so. In addition, under New Jersey insurance law, making or permitting any discrimination for issuance, extension or renewal of any policy or in the fixing of rates based on race, creed, color, national origin or ancestry is prohibited as an unfair method of competition and unfair and deceptive act and practice.²¹

Banning the use of education, occupation, and credit scores for insurance pricing and underwriting is a necessary and proper response to the unfair discrimination and excessive premiums that result from their use. As we detail below, numerous other states have banned non-driving factors from being used in auto insurance.

Past Precedents and Actions by Other Insurance Departments

Other states have banned various non-driving related factors from being used in auto insurance, establishing clear precedents for New Jersey to follow suit. Currently five states—California, Hawaii, Massachusetts, Nevada and Washington—have banned the use of credit information. And seven states—California, Georgia, Hawaii, Massachusetts, Michigan, New York, and Vermont—have banned the use of education and occupation.

In 1988 California voters approved Proposition 103, which establishes stronger consumer protections and requires that auto insurance premiums be based primarily on your driving record, miles driven, and years of driving experience. Insurers cannot use any other factors unless they have been approved by the Insurance Commissioner after meeting the requirement that they “have a substantial relationship to the risk of loss....[and] the use of any criterion without approval shall constitute unfair discrimination.” **Credit,**

²⁰ New Jersey Section 17:29AA-10. Available at <https://law.justia.com/codes/new-jersey/2021/title-17/section-17-29aa-10/>. See also 17:29B-4(7)(c) Unfair methods of competition, unfair, deceptive acts, practices, defined

4. The following are hereby defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance:

(7) Unfair discrimination... (c) Making or permitting any discrimination against any person or group of persons because of race, creed, color, national origin or ancestry of such person or group of persons in the issuance, withholding, extension or renewal of any policy of insurance, or in the fixing of the rates, terms or conditions therefor, or in the issuance or acceptance of any application therefor.

²¹ NJ Revised Statutes, Section 17:29B-4(7)(c). Available at <https://law.justia.com/codes/new-jersey/2021/title-17/section-17-29aa-10/>.



occupation, and education level have never been approved by the California Commissioner and their use is recognized as unfairly discriminatory and illegal. In 2008, Massachusetts Insurance Commissioner Nonnie Burnes implemented a new state regulation to ensure managed competition and protect consumers from excessive rates. This regulation (211 CMR 79) banned the use of education, occupation, and credit scores in insurance underwriting and rating.

In 2017 the New York Department of Financial Services (DFS) investigated auto insurance pricing and found that many New York drivers were being charged higher rates based on their education and occupation, without adequate actuarial justification. DFS issued a regulation sharply restricting the use of education and occupation in pricing, unless insurers could demonstrate that their use was not unfairly discriminatory.²² The ban took effect in 2018. Major insurers such as Allstate, Liberty Mutual, Progressive, and GEICO all eliminated the use of these factors. In July 2021, DFS fined a company \$500,000 for its failure to comply with the new law.²³ And in 2019 Michigan passed auto insurance reform legislation, which included a ban on education level, and occupation.

More recently, the Nevada Division of Insurance and the Washington State Office of the Commissioner of Insurance enacted temporary bans on the use of credit information in auto insurance pricing in response to the COVID-19 pandemic.

Conclusion

The Department of Banking and Insurance has the authority and responsibility to prohibit the use of credit scores, education, and occupation in auto insurance pricing and underwriting. Enacting this reform will help reduce premiums for consumers, combat unfair discrimination in auto insurance markets, and make insurance more fairly and accurately priced. In turn, eliminating unfair pricing factors would make coverage more affordable and accessible to low- and moderate-income New Jersey residents who are being unfairly surcharged because of their socioeconomic status.

²² Part 154 Private Passenger Motor Vehicle Insurance Multi-Tier Programs, [https://govt.westlaw.com/nycrr/Browse/Home/NewYork/NewYorkCodesRulesandRegulations?guid=I832d0f80bfe411dd8bd9c247e22df717&originationContext=documenttoc&transitionType=Default&contextData=\(sc.Default\)](https://govt.westlaw.com/nycrr/Browse/Home/NewYork/NewYorkCodesRulesandRegulations?guid=I832d0f80bfe411dd8bd9c247e22df717&originationContext=documenttoc&transitionType=Default&contextData=(sc.Default)) See also: https://www.dfs.ny.gov/reports_and_publications/press_releases/pr1712131

²³ https://www.dfs.ny.gov/reports_and_publications/press_releases/pr202107071.



On behalf of our organizations and the New Jersey consumers we represent, we urge the Department to take the necessary administrative action to ban the use of these discriminatory rating practices in auto insurance.

New Jersey Citizen Action
Anti-Poverty Network
BlueWave New Jersey
Consumer Federation of America
Center for Economic Justice
Consumer Action
Consumer Reports
Consumer Watchdog
Hispanic Statewide Chamber of Commerce
Indivisible Cranbury
Integrated Justice Alliance
Ironbound Community Corporation
Latin American Legal Defense and Education Fund
Latino Action Network
Latino Action Network Foundation
Laundry Workers Center
Lutherans Engaging in Advocacy Ministry
Make the Road New Jersey
National Association of Social Workers – New Jersey Chapter
National Consumer Law Center
National Domestic Workers Alliance
National Organization for Women of New Jersey
New Jersey Alliance for Immigrant Justice
New Jersey Appleseed
New Jersey Institute for Social Justice
New Jersey Policy Perspective
New Jersey Prison Justice Watch
New Jersey Working Families
New Jersey Tenants Organization
Returning Citizens Support Group
Salvation and Social Justice
SEIU 32BJ



Stand Central New Jersey

The African American Chamber of Commerce of New Jersey

Urban League of Essex County

Urban League of Union County

Cc: Matt Platkin, Acting Attorney General

George Helmy, Governor's Chief of Staff

Parimal Garg, Governor's Chief Counsel