

May 22, 2023

Superintendent Adrienne Harris
New York State Department of Financial Services
One State Street Plaza, 19th Floor
New York, NY 10004

Dear Superintendent Harris,

We, the undersigned organizations, urge the New York State Department of Financial Services (DFS) to prohibit the use of consumer credit information in auto insurance pricing and underwriting. Prohibiting credit information in auto insurance will make rates more affordable for consumers, help combat systemic racism, and greatly reduce unfair discrimination in the auto insurance market.

New York, along with every other state except New Hampshire, requires drivers to carry and maintain auto insurance. The state imposes stiff penalties for driving without insurance, including fines of up to \$1,500, suspension of driving privileges, and an additional \$750 fee to restore their license. State regulators and legislators 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, as things stand today, auto insurance in New York state is not fairly priced. Drivers with only fair or poor credit can be charged substantially more than drivers with excellent credit. For example:

- According to 2020 data provided by Consumer Federation of America (CFA), consumers who have a clean driving record and excellent credit pay a weighted statewide average of \$730 for basic liability coverage. But consumers with fair credit pay \$1,148 for auto insurance, 57% or \$418 more per year than drivers who have excellent credit. Even worse, drivers with a clean driving record and poor credit pay on average \$2,097 for insurance, a whopping \$1,367 more than drivers with excellent credit—a 187% increase.¹
- The impact of using credit score is even worse in many parts of the state. Drivers in the Bronx pay an average premium of \$1,666 if they have fair credit but \$5,269 if they have poor credit—an increase of \$3,063. And Brooklyn drivers pay an average premium of \$1,861 if they have excellent credit, \$3,046 if they have fair credit, and \$5,971 if they have poor credit.
- The impact of using credit information is especially severe in certain zip codes. For example, in Buffalo zip code 14211, a driver with a clean driving record with poor credit pays \$1,935 per year more than a driver with excellent credit. Drivers in Brooklyn zip code 11213 pay

¹ "The Thousand Dollar Insurance Penalty: How Insurance Companies' Credit Scoring and ZIP Code Rating Push Up Premiums for Safe Drivers in New York." By Douglas Heller and Michael DeLong. Consumer Federation of America. April 26, 2023. Available at <https://consumerfed.org/reports/report-the-thousand-dollar-insurance-penalty-how-insurance-companies-credit-scoring-and-zip-code-rating-push-up-premiums-for-safe-drivers-in-new-york/>

a staggering \$5,956 surcharge for having poor credit, just to obtain basic liability coverage.

- According to Bankrate, the 2023 average cost of full coverage in New York state is \$3,139, and a driver with poor credit would pay an extra \$4,047 for a total average premium of \$7,186.²
- The impact of credit score on New York’s pricing system is even greater than drunk driving. A study carried out by Consumer Reports in 2015 found that New York state consumers with clean driving records and poor credit even paid an average of \$589 MORE statewide than a driver convicted of driving while intoxicated, if that driver had excellent credit.³

As is clear from the data, the use of credit history by insurance companies unfairly raises rates on millions of low- and moderate-income consumers, including many people of color. According to a 2017 analysis by the Federal Insurance Office (FIO), auto insurance coverage is not affordable for some 5.2 million New Yorkers (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.⁴ New York has the largest number of residents experiencing unaffordable insurance of any state. In 2022, Bankrate estimates that on average, New Yorkers spend 5.05% of their incomes for auto insurance, greatly exceeding the federal affordability standard of 2% of household income.⁵

For many historic and structural reasons, the application of these characteristics in underwriting and rating disproportionately harms people of color. As the National Consumer Law Center has documented, multiple studies have shown that credit scores are highly correlated with race and income.⁶ They also “bake in” past patterns of discrimination, such as residential mortgage redlining, and discrimination in education and housing.

Almost by definition, people with less wealth and income have lower credit scores than people who more wealth and income. According to the Urban Institute, 16% of New York residents had a subprime credit score below 620 in August 2021, but people of color are more likely to have a subprime score.

² Deventer, Cate. *The True Cost of Auto Insurance in 2023 by State*, Bankrate.com, available at:

<https://www.bankrate.com/insurance/car/the-true-cost-of-auto-insurance-in-2023/>

³ “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>.

⁴ “Study on the Affordability of Personal Automobile Insurance.” Federal Insurance Office, U.S. Department of The Treasury. January 2017. Available at: https://consumerfed.org/wpcontent/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-AffordabilityAnalysis-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-livezip-codes-auto-insurance-unaffordable

⁵ Op. cit. note #2

⁶ *Past Imperfect: How Credit Scores and Other Analytics “Bake In” and Perpetuate Past Patterns of Discrimination*, National Consumer Law Center, 2016, available at:

https://www.nclc.org/images/pdf/credit_discrimination/Past_Imperfect050616.pdf

The institute also reports that 22.6% of residents in communities where people of color are a majority have a subprime score, compared with 12.4% of residents in majority white communities.⁷

By permitting auto insurers to use credit history to charge sharply higher rates to people of color, New York is perpetuating and exacerbating the racial wealth gap. A household that is charged an additional \$1,300-6,000 extra for auto insurance each year is far less likely to be able to save for a down payment for a car, a house or other household needs. Over 10 years, that driver could lose \$13,000 to \$60,000 in household income to higher payments, because of discriminatory pricing.

Use of insurance credit scores is also unfair because of the prevalence of errors and the lack of transparency. Insurance companies use secret proprietary scores that consumers can't see or review, not the more common FICO or credit bureau scores. They are based on credit reports, which are often riddled with errors that are highly difficult for consumers to correct. Many consumers are unaware that companies have access to and use this highly personal financial information, and most consumers are unaware that auto insurers charge them higher premiums based on their credit.

Since New York mandates auto insurance for all drivers, DFS has a responsibility to ensure that this product is affordable and that consumers don't experience unfair discrimination. In 2017 DFS took a very important step in this direction by banning the use of education level and occupational status in setting insurance rates.⁸ Credit history has a similar harmful impact on consumers, except its harmful impact is far more severe. We urge you to please move forward quickly with your efforts to investigate the harmful impacts of the use of credit score, and to propose and implement regulations to ban its use.

Sincerely,

Consumer Federation of America
 Consumer Justice for the Elderly: Litigation Clinic of St. John's University School of Law
 Consumer Reports
 Cypress Hills LDC
 Empire Justice Center
 Equality For Troy
 Genesee Co-op FCU
 Hispanic Federation
 Housing and Family Services of Greater New York
 Human Development Services of Westchester
 Long Island Progressive Coalition
 Margert Community Corporation
 Mount Vernon United Tenants
 NeighborWorks Community Partners

⁷ The Urban Institute, *Credit Health During the COVID-19 Pandemic*, updated March 8, 2022, available at: <https://apps.urban.org/features/credit-health-during-pandemic/#:~:text=Credit%20scores%20improved%2C%20and%20the,of%20693%20in%20February%202020>

⁸ "DFS Announces Final Regulation and Agreements With Two Major Insurers to Protect New York Drivers From Unfairly Discriminatory Auto Insurance Rates." Department of Financial Services. December 13, 2017. Available at https://www.dfs.ny.gov/reports_and_publications/press_releases/pr1712131.

New Economy Project
New York Communities for Change
New Yorkers for Responsible Lending
New York Public Interest Research Group (NYPIRG)
Northwest Bronx Indivisible
PathStone Corporation
Rockland Housing Action Coalition, Inc.
Rural Law Center of New York
The Housing Council at PathStone
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