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Comments of Legal Aid DC Regarding DISB's Proposed Balancing Test for Unfair Discrimination in Automobile Insurance Underwriting and Premium Setting

Legal Aid DC[1] appreciates the opportunity to comment on the District of Columbia Department of Insurance, Securities, and Banking's (DISB) proposal to utilize a balancing test to identify and prevent unfair discrimination in automobile insurance underwriting and premium setting.

Support for a Balancing Test that Addresses Racial Bias and Proxy Discrimination

Legal Aid DC is encouraged that DISB is proposing the use of a balancing test to identify and mitigate bias in automobile insurance underwriting. Such a framework must be designed to eliminate the use of racially discriminatory factors as well as variables that function as proxies for race or other protected characteristics.

The balancing test proposed by DISB in January 2026 is situated as one of three "sieves" that DISB may use in its final analysis to address the premium race gap it identified in its Unintentional Bias report. DISB's proposed three sieves, including the balancing test, present an important opportunity for DISB to reevaluate factors that may have historically been treated as necessary for underwriting but now warrant closer scrutiny due to their discriminatory effects.

Historically, insurance regulation focused primarily on model inputs by prohibiting the use of specific variables.[2] Increasingly, however, regulators are recognizing that

[1] Legal Aid DC is the oldest and largest general civil legal services program in the District of Columbia. The largest part of our work is comprised of individual representation in housing, domestic violence/family, public benefits, and consumer law. We also work on immigration law matters and help individuals with the collateral consequences of their involvement with the criminal legal system. From the experiences of our clients, we identify opportunities for court and law reform, public policy advocacy, and systemic litigation. For more information, visit www.LegalAidDC.org.

[2] *See* Jessica Leong, FCAS et al., Casualty Actuarial Society, A Practical Guide to Navigating Fairness in Insurance Pricing (2024), https://www.Insurance_Pricing.pdf.

discrimination can occur even when prohibited characteristics are not directly included in a model, due to correlations between considered factors and those prohibited characteristics.[3] As a result, emerging regulatory approaches focus on testing model outcomes for unfair discrimination and requiring insurers to report and justify those outcomes.[4] This shift appropriately recognizes that what may appear to be neutral variables may still produce discriminatory effects.

In evaluating the proposed three-sieve framework, DISB should also consider the practical impact of insurance pricing on District residents, particularly those living in communities that have experienced longstanding disinvestment and economic exclusion. For many households, automobile insurance is a necessary expense that competes with other basic needs. Accordingly, affordability should remain an important consideration when assessing whether underwriting and rating practices produce equitable outcomes.

Legal Aid DC supports DISB's consideration of a balancing test as part of this evolving regulatory framework. However, outcome testing alone is insufficient. DISB should also maintain and expand prohibitions on certain factors and characteristics that are highly correlated with race, income, or other protected statuses and that have historically disadvantaged marginalized District residents.

DISB's Proposed Framework Should Better Guard Against Proxy Discrimination and Historical Bias

<u>Require Empirical Validation and Consideration of Less Discriminatory Alternatives</u>

DISB's first sieve allows for a factor to be considered in auto insurance underwriting if "there is a rational explanation for how the factor relates to risk (e.g. driving record)." Legal Aid would argue that a driver record alone is sufficient, however, we understand that with modern technology there are other correlations that could be made that may have a "rational explanations." As such, insurers should be required to demonstrate, through empirical evidence, that a factor has a substantial and measurable relationship to expected loss and that less discriminatory alternatives would not achieve comparable predictive value. This is consistent with other jurisdictions, including California and

[3] *See* Jessica Leong, FCAS et al, Casualty Actuarial Society, A Practical Guide to Navigating Fairness in Insurance Pricing (2024), https://www.casact.org/sites/default/files/2024-08/A_Practical_Guide_to_Navigating_Fairness_in_Insurance_Pricing.pdf.

[4] *Id*.

Colorado, which require insurers to assess their model data to prevent unfair discrimination.[5]

Replace Historical Grandfathering with Review of External Data Sources and Predictive Models

Legal Aid recommends that DISB replace its second sieve with the exclusion of External Consumer Data and Information Sources (ECDIS)[6] unless certain conditions exist. The second sieve currently grandfathers in certain "historical" characteristics or factors.[7] DISB should avoid grandfathering existing rating factors without scrutiny. Automatically preserving longstanding practices risks perpetuating historical bias and undermining the purpose of the proposed reforms. Historical usage alone should not suffice. For example, redlining persisted for decades and generated extensive data, but that history cannot justify continued reliance on geographic classifications that merely reflect the effects of racial segregation.

Rather than grandfathering historical rating factors, DISB should replace the second sieve with a framework modeled on New York's regulation of external consumer data and predictive models.[8] New York prohibits the use of any external data source, algorithm, or predictive model unless they have independently determined that the data source or tool does not collect, rely upon, or utilize prohibited criteria. Insurers that operate in New York are not permitted to rely solely on vendor assurances of compliance or claims of proprietary confidentiality. New York also prohibits the use of any external data source, algorithm, or predictive model unless they can demonstrate that resulting underwriting and rating practices are not unfairly discriminatory. By using these "guiding principles" in the second sieve, DISB will avoid perpetuating the structural racism it intends to address through improved regulation.

[5] *Id.*

[6] Alternative or non-traditional data used by insurers – such as credit scores, social media habits, purchasing history, and biometric data – to supplement underwriting.

[7] *See* DC Dep't of Insurance and Banking, Proposed Balancing Test for Automobile Insurance January 2026 Premium Race Gap and the Balancing Test, DISBAutomobileInsuranceBalancingTestJanuary2026.pdf.

[8] *See* New York State, Dep't of Financial Services, Insurance Circular Letter No. 1 (2019): Use of External Consumer Data and Information Sources in Underwriting for Life Insurance, https://www.dfs.ny.gov/industry_guidance/circular_letters/cl2019_01.

Without clear limitations, the proposed sieves risk legitimizing disparities produced by variables that themselves reflect historical discrimination.

Codify Protections and Regulatory Standards

While we appreciate DISB's effort to balance innovation and consumer protection, we believe that statutory limitations on allowable rating factors remain necessary.

Although the District's insurance framework incorporates numerous protected characteristics through the District of Columbia Human Rights Act, those protections do not necessarily address the full range of variables used in modern insurance underwriting and rating systems. Accordingly, Legal Aid DC recommends that DISB continue to incorporate the traits protected under Unit A of Chapter 14 of Title 2 and expand insurance code protections to explicitly include:

- Zip code or geographic location;
- Consumer reports and credit-related information;
- Education level;
- Homeownership or renter status; and
- Immigration status.

Codification will provide greater certainty to consumers, insurers, and regulators while ensuring that protections remain enforceable.

Distinguishing True Risk from Economic Circumstance

Finally, Legal Aid DC urges DISB to carefully distinguish between factors that genuinely measure driving risk and factors that merely reflect economic circumstances.
For example, while claims history may have predictive value, DISB should evaluate whether disparities in claims frequency also reflect differences in financial resources and claims-reporting behavior rather than differences in driving risk alone. DISB should make greater use of existing crash and traffic safety data, including data maintained by the District Department of Transportation,[9] when evaluating the relationship between rating factors and actual driving risk. Available data sources, including information generated through the Strengthening Traffic Enforcement, Education, and Responsibility (STEER) Amendment Act of 2024, may help identify the behaviors most strongly associated with roadway danger and provide a more objective basis for evaluating insurer rating practices.

[9] District of Columbia, Crash Details Table, https://asc.ddot.dc.gov/datasets/DCGIS::crash-details-table/about.

Conclusion

District residents should not be subjected to unfairly discriminatory insurance pricing because of characteristics that serve as proxies for race, income, or other protected statuses. The District has an opportunity to improve its insurance regulatory framework so that it both protects consumers and promotes fairness in automobile insurance underwriting and premium setting.

Legal Aid DC appreciates DISB's consideration of these comments and looks forward to continued engagement on this important issue. If you have any comments or questions about our recommendations please contact Jen Jenkins, Senior Policy Attorney, at jjenkins@legalaiddc.org or Johanna Schmidt, Supervising Attorney, Consumer Law Unit at jschmidt@legalaiddc.org.