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United States House of Representatives

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Committee on Financial Services

Washington, D.C. 20515

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Mr. Michael McRaith
Director, Federal Insurance Office
U.S. Department of the Treasury
1500 Pennsylvania Ave., N.W.
Washington, D.C. 20220

Dear Director McRaith:

I write to express my strong support for your efforts to monitor the availability and affordability of auto insurance through the Federal Insurance Office's ("FIO's") recent notice and request for information published in the Federal Register. While auto insurance is a necessity for many Americans, certain anecdotal evidence has shown that access to affordable auto insurance is still a struggle for many households across America. In order for state and federal policymakers to have the information necessary to work on finding solutions that ensure access to affordable coverage for all Americans who need it, it is critical that FIO exercise its authority to monitor, nationwide, the nature and extent of affordable and available auto insurance. While I have some concerns with FIO's proposed definition of affordability and some of the comments that have been submitted in response, which are outlined below, I believe that FIO is generally adopting an appropriate approach on this important issue.

I am a longstanding advocate for the fair and equitable treatment of our nation's most vulnerable communities and individuals. As the author of the provision in the Dodd-Frank Wall Street Reform and Consumer Protection Act that directs FIO to monitor the extent to which traditionally underserved communities and consumers, minorities, and low- and moderate-income persons (hereafter, collectively, "Affected Persons") have access to affordable insurance products, I have a personal, and vested, interest in ensuring its proper execution. Further, given that 49 out of 50 states in this country mandate the purchase of auto insurance for the owners of vehicles registered in those states, I believe that it is both apt and prudent for FIO to elect to conduct a nationwide evaluation of the affordability of the auto insurance market as its first review using this authority.

The importance of having access to transportation cannot be overstated. A 2015 study by Harvard Economics Professors Raj Chetty and Nathaniel Hendren found that geographic mobility was directly linked to economic mobility.[1] Additionally, a lack of access to transportation can also have implications for health outcomes. For example, according to a 2009 report to Congress by the U.S. Department of Agriculture, more than 11 million Americans – or over 4 percent of the U.S. population – are both poor and live in low-income areas more than a mile away from a supermarket that offers healthy food choices.[2] Living in this type of "food desert" without access to transportation is strongly linked to an increased likelihood of developing diabetes and suffering from obesity.[3] Unfortunately, there is new evidence that the public transit systems in this country are unable to effectively handle the needs of Americans living in poverty.[4] As a result, for many Affected Persons, having a personal vehicle may be the only way to get to work, to school, to the doctor, or have access to healthy food choices. Because auto insurance is a basic necessity for so many families, ensuring that such insurance is both available and affordable is of paramount importance, and an appropriate area of federal inquiry.

<u>Definition of Affordability</u>
By its very nature, affordability is a subjective concept that is difficult to standardize for all persons. Consequently, FIO has developed, and proposed using, a definition of affordable that is based on an "affordability index" derived from the average annual personal auto liability insurance premium for Affected Persons; and that creates a presumption of affordability if, for Affected Persons, the affordability index is less than or equal to two percent of household income. I broadly support the use of such a definition, with the specific caveats listed below.

Definition of Affected Persons
The definition of Affected Persons, similar to the definition of affordability, will be a determinative factor in FIO's ultimate findings. The underlying statute creates a tripartite definition of Affected Persons, consisting of (i) traditionally underserved communities and consumers; (ii) minorities; and (iii) low- and moderate-income ("LMI") persons. For practical reasons, FIO has proposed to define each subcategory individually for the purposes of its inquiry.

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[1] Raj Chetty and Nathaniel Hendren, *The Impacts of Neighborhoods on Intergenerational Mobility: Childhood Exposure Effects and County-Level Estimates*, Unpublished Manuscript, 2015.
[2] U.S. DEP'T OF AGRIC., ECON. RESEARCH SERV., ACCESS TO AFFORDABLE AND NUTRITIOUS FOOD: MEASURING AND UNDERSTANDING FOOD DESERTS AND THEIR CONSEQUENCES, (Jun. 2009).
[3] Dante Chinni, *The Socio-Economic Significance of Food Deserts*, PBS NEWSHOUR, Jun. 29, 2011, http://www.pbs.org/newshour/rundown/the-socio-economic-significance-of-food-deserts/.
[4] *See* Iman Cronk, *The Transportation Barrier*, THE ATLANTIC, Aug. 9, 2015, http://www.theatlantic.com/health/archive/2015/08/the-transportation-barrier/399728/; *see also* Gillian B. White, *Stranded: How America's Failing Public Transportation Increases Inequality*, THE ATLANTIC, May 16, 2015, http://www.theatlantic.com/business/archive/2015/05/stranded-how-americas-failing-public-transportation-increases-inequality/393419/.

First, I do not support FIO's use of "urban area" as a proxy for traditionally underserved communities. According to the Rural Family Economic Success Action Network, a non-profit organization dedicated to improving rural-focused opportunities, "rural families have fewer transportation alternatives to get to work and the grocery store, so they are more dependent on owning a car… [and i]n every state insurance agencies consider a range of factors in determining risk, many of which put low-income rural families at a disadvantage."[5] As such, failing to consider rural areas, by using urban area as a proxy for underserved, could unintentionally exclude an important segment of traditionally underserved communities. Moreover, in many high-density urban areas, high-income households constitute a significant proportion of the population, and inclusion of these high-income households in a definition of traditionally underserved communities, could unduly skew FIO's findings to overestimate the availability and affordability of auto insurance policies within these markets.

I recommend two alternative approaches. First, FIO could consider using data from state insurance regulators, in conjunction with data from state motor vehicle departments, to determine those counties – or ideally, zip codes – where motor vehicle registration exceeds, by a statistically-significant difference, the number of in-force auto insurance policies. Alternatively, FIO could study residual market data, such as data related to the low-cost auto liability programs created by states, to evaluate the extent to which otherwise eligible policyholders are steered into these residual markets to obtain auto insurance. These different methods of evaluation would both consider rural and urban areas, and would, for the most part, exclude high-income individuals from being considered part of an underserved community.

Secondly, I fully support FIO's efforts to measure affordability of auto insurance for *both* minorities and majority minority geographic areas.

Thirdly, I am concerned about FIO's proposed definition of LMI persons as "individuals living in areas where the annual income of the geographic area is less than 80 percent of the median household income of the metropolitan statistical area or state" because this would include individuals who are not LMI, and therefore be potentially misleading. I urge FIO to separate definitions for "LMI individuals" and "LMI geographies," similar to the way that FIO has separate definitions for "minority" and "majority minority geographic areas." This approach would avoid confusion and it would also acknowledge the distinct challenges that LMI individuals in LMI communities face.

Affordability Index

I disagree with FIO's proposed approach of basing its affordability index on the average annual personal auto liability insurance premium, which would exclude collusion coverage. While it is

[5] Rural Family Economic Success Action Network, DRIVE IT DOWN! THE HIGH COST OF AUTO INSURANCE FOR RURAL FAMILIES, http://rufes.org/2013/05/06/drive-it-down-the-high-cost-of-auto-insurance-for-rural-families/ (2013).

true that all states – except for New Hampshire – only mandate the purchase of auto liability coverage, for consumers who have leased, or taken out a loan to buy, their vehicles, a leasing company or lender will typically require the consumer to also obtain collision coverage in order to protect the collateral for the loan.[6] Moreover, where a vehicle lessee or owner fails to procure the necessary auto insurance, force-placed insurance is often installed, with premiums that significantly exceed those which would otherwise be found by consumers shopping for themselves.[7]

This becomes a more significant issue in light of the fact that LMI households disproportionately rely on loans and leases to gain access to private transportation. A recent report found that the two fastest growing vehicle segments in auto leases between 2008 and 2013 were compact and subcompact vehicles – which outpaced the growth in all of the other 13 vehicles segments, combined.[8] And further, the share of households with incomes of less than $50,000 annually that registered leases increased by more than 20 percent in 2013 alone.[9] Indeed, both auto leases and loans have been on the rise over the past few years, and an ever greater proportion of the auto-owning population is becoming subject to mandatory collision coverage requirements. If FIO simply looks exclusively at liability coverage, I am concerned that this will not provide a full picture of affordability across the country.[10] I, therefore, urge FIO to consider the cost of collision coverage, in addition to the cost of liability coverage, when creating its affordability index for the purposes of its study.

Conversely, I reject the suggestion that FIO should consider the use of public transportation in lieu of private vehicular transportation in its affordability index as proposed by some

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[6] *See* Consumer Financial Protection Bureau, *Frequently Asked Questions: Should I Have Car Insurance Lined Up Before I Purchase a Car?*, http://www.consumerfinance.gov/askcfpb/789/should-i-have-car-insurance-lined-i-purchase-car.html (explaining that "[a]ll lenders require that you have insurance for damage to the car"); *see also* California Department of Insurance, *Automobile Insurance Guide*, 9 (Sept. 2014), https://www.insurance.ca.gov/01-consumers/105-type/95-guides/01-auto/upload/Auto_Ins_Bro_Mx-linked.pdf.

[7] *Id.*

[8] Lacey Plache, *AutoEconomy Trends: Leasing Goes Mainstream*, EDMUNDS, (2014) http://www.edmunds.com/industry-center/analysis/autoeconomy-trends-leasing-goes-mainstream.html; *see also* Ethan Lindsay, *Behind the Data: Car Type by Income Bracket*, Sep. 12, 2013, http://www.marketplace.org/topics/wealth-poverty/income-upshot/behind-data-car-type-income-bracket (demonstrating the relationship between income and type of vehicle purchased).

[9] Lacey Plache, *supra* note 8.

[10] According to a recent report by Experian Automotive, a clear majority of new and used vehicles sales relied on financing to complete the transaction, at 84 percent and 55 percent, respectively. Moreover, the New York Times reported earlier this year that the current rate of leased vehicles is greater than at any point in the past decade, with more than 25 percent of all vehicle transactions consisting of leases. *See* Experian Automotive, *Majority of Consumers Rely on Financing as Loan Amounts for New Vehicles Skyrocket to Reach Another All-Time High* (Mar. 4, 2015), https://www.experianplc.com/media/news/2015/q4-2014-safm-part-2/; *and* Aaron Kessler, *Auto Leasing Gains Popularity Among American Consumers*, N.Y. TIMES, Jan. 9, 2015, at B4.

commentators.[11] The use of public transit is not always an available alternative, particularly in rural parts of the country, or for Affected Persons who have to travel to jobs at unusual times, thereby making, in many cases, public transit a non-viable alternative. Moreover, the plain text of the statute directs FIO to monitor the extent to which Affected Persons "have access to affordable insurance products",[12] not the extent to which Affected Persons have access to alternatives to affordable insurance products. Therefore, including alternatives to affordable auto insurance in its affordability index would run counter to FIO's statutory mandate.

Presumption of Affordability
I support FIO's presumption of affordability where the affordability index for auto insurance coverage does not exceed two percent of the household income of Affected Persons. I also agree with the point contained in the letter dated August 31, 2015, from several consumer and civil rights advocates that the "baseline income against which premiums are measured must accurately reflect the income of Affected Persons."[13] FIO must guard against unintentionally overestimating the affordability of auto insurance for Affected Persons by: (i) unreasonably inflating the household income against which the affordability index is compared by including household incomes other than those of Affected Persons; or (ii) failing to adequately consider the additional cost of procuring collision coverage.

I reject the argument, advanced by some commentators that the "standard rates for automobile insurance are affordable, in part, because their cost is comparable to other common discretionary purchases made by U.S. consumers such as mobile phone service, cable TV and Internet access."[14] It is self-evident that where, as with auto insurance, the law mandates certain behavior, the carrying-out of such behavior cannot be justly considered "discretionary." Thus, comparing discretionary purchases with non-discretionary purchases creates a false equivalence. Further, and perhaps more importantly, there is a great deal of evidence that demonstrates how access to the Internet has the ability to make profound impacts in the educational lives of Affected Persons. According to a 2014 report by the Alliance for Excellent Education and the Stanford Center for Opportunity Policy in Education "on nearly every indicator of educational access – school funding, qualified teachers, high-quality curriculum, books, materials, and computers – low-income students and students of color have less access than white and affluent students...[And o]nly 3 percent of teachers in high-poverty schools agreed that 'students have the digital tools they need to effectively complete assignments while at home,' compared to 52

[11] Letter from Prop. Casualty Insurers Assoc. of America to Lindy Gustafson, Fed. Ins. Office, U.S. Treas. (Aug. 31, 2015), p. 8.
[12] 31 U.S.C. 313(c)(1)(B).
[13] Letter from Americans for Fin. Reform et al. to Lindy Gustafson, Fed. Ins. Office, U.S. Dept. of Treas. (Aug. 31, 2015).
[14] Letter from Richard Foster, Sr. VP and Sr. Counsel for Legal and Reg. Affairs, Fin. Serv. Roundtable to Lindy Gustafson, Fed. Ins. Office, U.S. Dept. of Treas. (Aug. 31, 2015), p. 6.

percent of teachers in more affluent schools."[15] Thus, it is simply a red herring – and frankly, insolent – to suggest that because households may elect to purchase a discretionary service such as Internet access or mobile phone service,[16] that a broad uptake in a nondiscretionary service, such as auto insurance, means that it is *de facto* affordable.

Data Collection

Lastly, I reject any industry views about the undue burden imposed by FIO in obtaining data to conduct this statutorily mandated review and support FIO's decision to use any statutorily created authority necessary for it to carry out its inquiry effectively.

According to at least one commentator, the proposal would "likely impose costly and unnecessary data collection burdens on insurance providers".[17] However, Congress was careful to grant FIO authority to collect data in a way that would not be overly burdensome to the industry. The statute requires advance coordination by FIO and state and federal regulators to ensure that the to-be-subpoenaed information is not already publically-available or otherwise collected by supervisory regulators.[18] However, even though advance coordination is required, there is nothing in the statute to suggest that advance coordination should preclude the use of compulsory process where appropriate. Indeed, if such an interpretation were desired, Congress would not have included the provision granting subpoena and enforcement authority. Additionally, the statute contains an explicit carve-out for small insurers who could not bear the costs associated with mandatory data collection. Therefore, in the event that advance coordination is insufficient for FIO to obtain the necessary data to conduct its inquiry, and mandatory data collection is ultimately required, FIO still has the ability to exclude from data calls those insurers for whom FIO considers such additional data collection processes to be unduly burdensome. This multi-level system of protection for the private sector serves as a barrier to unnecessary, repetitive, and unduly burdensome data collections by FIO.

The unambiguous text of the authorizing provision makes clear that FIO is empowered "to require by subpoena the production of the data or information requested" from insurers.[19] And I am confident that the safeguards built into this authority are sufficient to avoid unnecessarily

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[15] Linda Darling-Hammond, Molly B. Zielenzinski & Shelly Goldman, *Using Technology to Support At-Risk Students' Learning*, Sept. 2014 at 2-3.

[16] Currently, "7 percent of Americans own a smartphone but have *neither* traditional broadband service at home, *nor* easily available alternatives for going online other than their cell phone…13 percent of Americans with an annual income of less than $30,000 per year are smartphone-dependent [for Internet access... and] 12 percent of African Americans and 13 percent of Latinos are smartphone-dependent, compared with 4 percent of whites." PEW RESEARCH CENTER, THE SMARTPHONE DIFFERENCE, 2-4 (April 2015) (emphasis in original).

[17] Letter from Foster to Gustafson *supra* note 13, at 9.

[18] 31 U.S.C. 313(e)(4).

[19] 31 U.S.C. 313(e)(6).

burdening the industry. I, therefore, also urge FIO to use its full authority to conduct a substantive and data-driven inquiry.

Conclusion

"For most Americans, access to the best job for which one is qualified requires ownership of a car. As a result, car ownership among low- and moderate-income households is high."[20] Yet, at least one nationwide study found that the largest auto insurance companies in the country have been charging lower-risk, low-income drivers more in premiums than higher-risk, high-income drivers.[21] This type of non-risk-based premium pricing discrimination is unfair to good-drivers with low- and moderate-incomes, it is abusive in light of the nearly universal mandate to purchase auto insurance, and it is unacceptable in a society where we espouse nondiscriminatory values.

I applaud FIO's efforts to investigate the auto insurance market in this country, and develop a full accounting of the current state of auto insurance affordability and availability for Affected Persons in this nation. When one of the most basic tools necessary to support economic mobility, reduce poverty, better health outcomes, and enhance educational opportunity comes with a mandate to purchase a service that enriches for-profit companies, we must be fully cognizant of the costs and consequences of that policy.

Sincerely,

MAXINE WATERS
Ranking Member

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[20] TOM FELTNER, STEPHEN BROBECK & J. ROBERT HUNTER, THE HIGH PRICE OF MANDATORY AUTO INSURANCE FOR LOWER INCOME HOUSEHOLDS, Consumer Fed. of America (Sep. 2014).

[21] Press Release, Consumer Federation of America, Largest Auto Insurers Frequently Charge Higher Premiums to Safe Drivers than to Those Responsible for Accidents (Jan. 28, 2013) (defining lower-risk drivers as those with no accident history, and higher-risk drivers as those whose driving history did indicate responsibility for an accident), http://www.consumerfed.org/pdfs/PR.AutoInsurancePremiums1.28.13.pdf.