



January 29, 2014

The Honorable Dave Jones
Insurance Commissioner
State of California
300 Capital Mall, Suite 1700
Sacramento, CA 95814

Re: Petition for Rulemaking Pursuant to Government Code section 11340.6 to
Stop Illegal Auto Insurance Overcharges

Dear Commissioner Jones:

The non-profit public interest organizations listed below hereby request that you immediately initiate a rulemaking proceeding and promulgate an amendment to the Proposition 103 Automobile Rating Factor regulations (California Code of Regulations, title 10 (“10 CCR”), section 2632 et seq.) to prohibit auto insurance companies from surcharging motorists based on their occupation, education level, membership in elite organizations and other unauthorized rating factors, many of which are thinly veiled surrogates for wealth, ethnicity and race. The use of these unauthorized rating factors increases the cost of insurance for California motorists and is a direct violation of Proposition 103.

In recent years, insurance companies have been marketing what they call “affinity groups” to California residents, promising premium reductions to those who qualify. Examples of “affinity groups” include lawyers, doctors, business professionals, college graduates, homeowners, and other “associations” fabricated by insurance companies solely for the purpose of discriminating against unwanted motorists. Because the auto rating factor process established by Proposition 103 is a revenue-neutral, “zero-sum” system (see generally *The Foundation for Taxpayer and Consumer Rights v. Garamendi* (2005) 132 Cal. App. 4th 1352, 1367-1368), those who do not “qualify” for the “affinity groups” – those who aren’t members of elite professions, people who have lost jobs or are otherwise unemployed, students, and retired people – are required to pay higher premiums to subsidize those who do qualify.

A recent national study by the Consumer Federation of America determined that “some major auto insurers charge higher rates to drivers with less education and lower-status jobs,” and concluded that “auto insurers are discriminating on the basis of income and race” – including in California. For example, GEICO was found to charge a factory worker in Oakland, California with a high school degree 33% more than an executive with a college degree with the same driver safety record, and everything else being equal. Liberty Mutual charges a factory worker 20% more than an executive (\$1074 vs. \$892). (Exhibit A, “Major Auto Insurers Charge Higher Rates to High School Graduates and Blue Collar Workers: National Consumer Survey Reveals that Large Majorities Reject the Use of Education and Occupation in Setting Auto Insurance Rates,” July 22, 2013, p. 1, 2.) “States should prohibit the use of these demographic factors that bear no logical relation to insurer risk,” CFA concluded.

The application of “affinity groups” is *already* unlawful in California, however.

Proposition 103 Bars the Use of Unapproved Rating Factors

Prior to Proposition 103, “California ha[d] less regulation of insurance than any other state, and in California automobile liability insurance [was] less regulated than most other forms of insurance.” (20th Century Ins. Co. v. Garamendi (1994) 8 Cal.4th 216, 240, quoting King v. Meese (1987) 43 Cal.3d 1217, 1221.) In particular, automobile insurance companies were free to set rates by whatever method they chose, often setting premiums based upon personal characteristics beyond the control of the applicant, or on factors that were completely unrelated to how safely the insured drove. Among these arbitrary rating factors were education level, employment status, nature of job or business, and place of residence. (National Insurance Consumers Organization, *Insurance In California: A 1986 Status Report For The Assembly*, October 1986.)

In 1988, finding that “the existing laws inadequately protect consumers and allow insurance companies to charge excessive, unjustified and arbitrary rates,” California voters established a process by which the rating factors used by insurance companies to set auto insurance premiums are strictly regulated. Insurance Code section 1861.02(a) requires that premiums be determined principally by three specified rating factors – the insured’s driving safety record; annual mileage, and years of driving experience – and, to a lesser extent, by any optional rating factors that “the commissioner may *adopt by regulation* and that have a substantial relationship to the risk of loss.” (Ins. Code § 1861.02(a)(4) [emphasis added].) The current list of authorized optional rating factors can be found at 10 CCR 2632.5(d). (See Exhibit B.) The use of any rating factor that has not been adopted by the Commissioner by regulation – that does not appear on that list – “shall constitute unfair discrimination,” which is a violation of section 1861.05(a).

No insurance company has presented *any evidence* that any education level, occupation or any other “affinity group” bears *any* relationship to the risk of loss, much less the “substantial relationship” required by the statute. Nor has the Commissioner ever authorized, by regulation, any “affinity group” classification as an optional automobile rating factor. Moreover, because “affinity groups” have not been subjected to the automobile rating factor rules set forth in the regulation, it is possible that these classifications have a greater weight and impact on premiums than the three mandatory factors – a result that violates Proposition 103.

Insurance companies contend that “affinity groups” are authorized by Insurance Code section 1861.12.¹ The argument is incorrect. Section 1861.12 was enacted to permit groups of

¹ The companies note that class plan instructions published by the Department contain the following sentence, which they assert establishes authority for the use of “affinity groups”: “CIC §1861.12 allows for the submission of group programs without restriction as to the purpose of the group, occupation or type of group.” (Private Passenger Auto Class Plan Filing Instructions, California Department of Insurance, April 15, 2011, pp.3-4.) The instructions, which do not have the force of law, are void to the extent they conflict with the statutes and regulations implementing Proposition 103.

consumers to negotiate a “group plan” with an insurance company. “Affinity groups,” by contrast, are insurer-created marketing schemes based on impermissible rating characteristics. The suggestion that “affinity groups” are authorized by section 1861.12 cannot be squared with section 1861.02; such an interpretation would establish a loophole in Proposition 103 that would allow insurance companies to evade the voters’ explicit direction in section 1861.02 and the auto rating factor regulations that implement it. Obviously the voters would not have enacted stringent regulation of automobile rating factors only to allow insurance companies to completely ignore section 1861.02 by creating an unregulated patchwork of “groups” that fit their preferred unfairly discriminatory rating categories.

A Regulation is Urgently Needed to Protect the Public

A number of insurance companies have submitted “affinity group” programs as part of their applications to the Department for rate or premium changes. These applications have taken effect without being subject to a public hearing that would have isolated and addressed the “affinity group” proposals. Intervenors in rate proceedings have frequently objected to the insurers’ use of “affinity groups.” However, Department staff members have repeatedly declined to examine affinity group proposals in the context of rate or class plan applications, preferring to address the issues in a rulemaking. The Department held an informal workshop on affinity groups three years ago, but unfortunately that inquiry never proceeded to a rulemaking hearing. As a result, a growing number of Californians are being subjected to unlawful surcharges.

Recently, an Administrative Law Judge objected to portions of a rate application submitted by a major insurance company that contained an “affinity group” program. The Judge stated:

First, the affinity group program contemplates granting discounts to the members of each affinity group, and paying for these discounts by increasing by 1.24% the “standard” premium payable by non-members. These non-member[s] constitute 51% of Allstate’s automobile insurance policyholders. Thus, the standard policyholders get no benefit from the rate reduction. Instead they suffer a rate increase in order to support Allstate’s argument that the affinity programs are “revenue neutral.” *This is not fair, just, or equitable.*

Moreover, if we examine the affinity groups, we see their members are generally likely to be more affluent than those in the “standard” or non-member group. The affinity group descriptions make this clear. “Professionals” and “specialized professionals”(26.9% of Allstate auto policyholders) are likely to have higher incomes than non-professionals; homeowners and condo owners (13.1% of Allstate policyholders) would have significantly greater assets than standard “non-member” policyholders; “alumni associations” (6% of Allstate policyholders) would generally mean associations of individuals who are more highly educated than ordinary “standard” policyholders. The parties provided no information as to the status of persons who are members of the Allstate Motor Club, but it appears the affinity program is indeed a “class” plan, favoring a more

affluent class (members of the affinity groups) over a majority of Allstate's general policyholders.

The criteria for granting rate discounts to these newly invented affinity groups are nowhere to be found in the regulations. Specific regulations do allow discounts based on “Optional Factors” not strictly related to individual driving records. These Optional Factors are specially itemized at California Code of Regulations, title 10, section 2632.5, subdivisions (d)... None of the Optional Factors fit the Allstate affinity program.

(Decision Rejecting Proposed Settlement, *In The Matter Of The Rate Application Of Allstate Insurance Company, Allstate Indemnity Company, Northbrook Indemnity Company*, File No. PA – 2013-00003, Sept. 24, 2013, pp. 2-3 [Emphasis added].)²

The public rulemaking process established by California law and expressly required here by Proposition 103 is the most efficient method for addressing what has now become a nearly industry-wide abuse. A rulemaking proceeding is also appropriate because, as noted above in footnote 1, instructional materials published by the Department have caused confusion by referencing Insurance Code section 1861.12. Indeed, in the Allstate case noted above, the Administrative Law Judge agreed that a rulemaking proceeding was preferable:

As suggested by Allstate and the Department, a rulemaking proceeding would be a desirable way of resolving some of the doubts about the affinity programs, since, given the Department’s consistent practice of approving them, a decision in this area could have far-reaching, industry-wide consequences. The many carriers using such programs, and the consumer organizations opposing or seeking to modify them, should have a full opportunity to be heard in formulating appropriate standards and clarifying regulations, and should not otherwise have the issues resolved in the context of reviewing a stipulated settlement of a single prior approval rate case.

(Proposed Decision, *In the Matter of the Rate Application of Allstate Insurance Company, Allstate Indemnity Company, Northbrook Indemnity Company*, File No. PA – 2013-00003, Nov. 14, 2013, pp. 24-25.)

Finally, a rulemaking will obviate the need for litigation to remedy the abuse.³

² This Order was subsequently withdrawn, and the Administrative Law Judge overruled Consumer Watchdog’s objections to a stipulation between the Department of Insurance and Allstate that allowed the company’s proposed affinity groups to take effect if permitted by the Commissioner. On December 17, 2013, you adopted the Administrative Law Judge’s decision and permitted Allstate to utilize the proposed “affinity groups.”

³ Proposition 103 provides for a private right of action to enforce its provisions. (Ins. Code § 1861.10(a); *Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968.) However, as you know, the insurance industry contends that the agency’s “approval” of an illegal practice immunizes the insurance company from civil liability, and one court has accepted this radical view (*MacKay, et al. v. Superior*

Authority for Petition and Rulemaking

The undersigned organizations submit this Petition pursuant to Government Code section 11340.6, which provides that “any interested person may petition a state agency requesting the adoption, amendment, or repeal of a regulation.”

As Insurance Commissioner, you have both the authority and the responsibility to enforce Proposition 103 and in particular, to take such actions as are necessary to protect California consumers and to obtain full compliance with California law. (Ins. Code § 12921(a).) The courts have recognized that the Commissioner has the necessary authority to implement and enforce the requirements of Proposition 103. (*Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805, 824.)

Insurance Code section 1861.02(e) expressly vests the Commissioner with the responsibility to promulgate regulations to enforce the law’s auto rating factor requirements.⁴

Moratorium on Further “Affinity Group” Programs

In connection with this request for a rulemaking, the undersigned organizations ask that you immediately order a moratorium on the processing of any applications that propose new automobile affinity group programs or changes to existing programs, effective until such time as a regulation is promulgated.

It should be emphasized that the Insurance Commissioner has no authority to authorize additional rating factors on an ad hoc basis as part of review and approval of a rate or class plan application. (See *The Foundation for Taxpayer and Consumer Rights v. Garamendi* (2005) 132 Cal. App. 4th 1352, 1372 [“The voters limited the Insurance Commissioner’s authority both substantively and procedurally. Substantively, the Insurance Commissioner may adopt only those optional rating factors having a “substantial relationship to the risk of loss.” (Ins. Code § 1861.02, subd. (a)(4).) Procedurally, the Insurance Commissioner may do so only in the context of a formal rulemaking proceeding with established rights of public participation and judicial review.”]) Imposing a moratorium on further agency action is needed to protect California consumers as well as public confidence in the integrity of the agency you oversee.

Court (2010) 188 Cal.App.4th 1427). This is a further reason for the resolution of the “affinity group” issue by rulemaking and an immediate moratorium on agency actions that insurers would no doubt argue bar a civil challenge to the unlawful programs.

⁴ Your predecessors utilized this authority to promulgate an amendment to the auto rating factor regulations in circumstances identical to these. For example, in 2002, the Commissioner amended those regulations to bar insurance companies from applying the “persistence” optional rating factor in a manner that would allow an insurance company to consider an applicant’s prior insurance coverage – a rating factor expressly barred by Proposition 103. (See Cal. Code of Regs., tit. 10, § 2632.5(d)(11).)

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Conclusion

Immediate action is needed to put an end to the use of unlawful and unauthorized rating factors that lead to the very unfair, unjust and discriminatory practices that the voters barred when they passed Proposition 103. We look forward to your response to this Petition within thirty days, as required by Government Code section 11340.7, and to working with you.

Sincerely,



Harvey Rosenfield
Founder, Consumer Watchdog



Pamela Pressley
Litigation Director, Consumer Watchdog

Peter Kuhns
Alliance of Californians for Community Empowerment (ACCE)

Rev. Rick Schlosser
California Council of Churches-California Church Impact

Samuel Chu
California Industrial Areas Foundation

Clare Crawford
Center on Policy Initiatives

Larry Gross
Coalition for Economic Survival

Ken McEldowney
Consumer Action

Robert Hunter
Consumer Federation of America

Paul Song
Courage Campaign

Kerry Gallagher
Housing Long Beach

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Maria Brenes
Inner City Struggles

Alexandra Suh
Koreatown Immigrant Workers Alliance

Richard Marcantonio
Public Advocates

Amy Bach
United Policyholders

EXHIBIT A



Consumer Federation of America

Immediate Release:
July 22, 2013

Contact:
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MAJOR AUTO INSURERS CHARGE HIGHER RATES TO HIGH SCHOOL GRADUATES AND BLUE COLLAR WORKERS

National Consumer Survey Reveals That Large Majorities Reject the Use of Education and Occupation in Setting Auto Insurance Rates

Washington, DC – Today, the Consumer Federation of America (CFA) released a new analysis showing that some major auto insurers charge higher rates to drivers with less education and lower-status jobs. Among its findings, the research reveals that for the minimum liability coverage, which state governments require:

- GEICO often charges a factory worker with a high school degree far higher annual premiums than a plant supervisor with a college degree – 45% more in Seattle (\$870 vs. \$599), 40% more in Hartford (\$1299 vs. \$926), 33% more in Oakland (\$922 vs. \$693), 23% more in Louisville (\$2200 vs. \$1791), 21% more in Chicago (\$1013 vs. \$840), and 20% more in Baltimore (\$1971 vs. \$1647).
- At GEICO, these differences would be even greater if, for education, the comparisons also included no high school degree and a graduate degree. For example, the Baltimore factory worker would pay an annual premium of \$2061 with no high school degree, an annual premium of \$1971 with a high school degree, an annual premium of \$1801 with a college degree, and an annual premium of \$1722 with a graduate degree.
- Progressive also often charges a factory worker with a high school degree higher annual premiums than a plant supervisor with a college degree – 33% more in Baltimore (\$1818 vs. \$1362), 14% more in Houston (\$1406 vs. \$1236), 9% more in Louisville (\$2390 vs. \$2185), 9% more in Denver (\$995 vs. \$911), and 8% more in Oakland (\$736 vs. \$684).
- Liberty Mutual charges a high school graduate higher annual premiums than a college graduate – 13% more in Baltimore (\$2116 vs. \$1877), 13% more in Houston (\$1373 vs. \$1216), 12% more in Phoenix (\$1592 vs. \$1418), and 10% more in Hartford (\$1913 vs. \$1735). In five other cities studied – Atlanta, Louisville, Chicago, Denver, and Seattle – Liberty's website quoted rates for a college graduate but not for a high school graduate.
- In many cities, Farmers charges those who are neither professionals nor certain government workers five percent higher premiums.

For each of these factors, all factors except education and income were held constant. These factors, including a perfect driving record, are described below.

“Auto insurers charge high premiums for minimal coverage to most working people, even those with perfect driving records, who live in urban areas,” said Stephen Brobeck, CFA’s Executive Director. “Since most Americans need a car and almost all states require the purchase of auto insurance, many lower-income workers are faced with the choice of paying these high, and often unaffordable prices, or breaking the law by driving without insurance,” he added. CFA estimates that one-quarter to one-third of drivers with household incomes under \$36,000 – 40 percent of all households – are uninsured.

Public Rejects Use of Education and Income in Auto Insurance Rate-Making

Yet, a national survey has revealed that, by large majorities, the public rejects the use of education and occupation by auto insurers in setting rates. In a June 2012 survey of a representative sample of 1010 adult Americans, conducted by ORCI, 68% of respondents said it was unfair for auto insurers to use education, while 65% said it was unfair for insurers to use occupation, in setting rates. For those with moderate household incomes (\$25,000-\$50,000), the percentages were even higher – 74% for education and 69% for occupation. (Respondents were interviewed either by landline or cell phones, and the margin of error was plus or minus three percentage points.)

“The American public knows that it is unfair for auto insurers to use factors like education and occupation in setting rates,” said J. Robert Hunter, CFA’s Director of Insurance, a former Texas Insurance Commissioner, and a former Federal Insurance Administrator. “In effect, auto insurers are discriminating on the basis of income and race. States should prohibit the use of these demographic factors that bear no logical relation to insurer risk.”

Much research has shown that both education and occupation are highly correlated with income and ethnicity. While many states prohibit the use of education and occupation to deny coverage, they permit the use of these factors in setting rate levels. That helps explain why some quoted annual premiums for minimum liability coverage are so high – sometimes exceeding \$3000, even \$4000. These high rates, which few drivers if any pay, effectively deny low- and moderate-income consumers coverage.

Minimum Liability Rates Are High Across-the-Board for Moderate-Income Good Drivers in Urban Areas

The CFA analysis, conducted in May and June 2013, examined the use of education and occupation by the ten largest auto insurers by market share – State Farm, Allstate, GEICO, Progressive, Farmers, USAA, Liberty Mutual, Nationwide, Travelers, and American Family – in ten major urban areas in different parts of the country – Hartford, Baltimore, Atlanta, Louisville, Chicago, Houston, Denver, Phoenix, Oakland, and Seattle. CFA used the websites of these insurers to determine whether they use education and occupation in their pricing and, if so, the impact of the use of these factors. The driver studied was a 30-year old single woman renting in a moderate-income area (c. \$30,000 median income), who was driving a 2003 Honda Civic, had driven for ten years with no accidents or moving violations, and was without insurance coverage for the past 15 days.

As the table below reveals, if this woman were a factory worker with a high school degree, she would be charged high to very high annual premiums for minimum liability coverage by the eight insurers whose websites permitted rate comparisons (USAA and American Family did not) in five representative cities. In more than three-quarters of the 40 cases (78%), annual premiums exceed \$900 or were not quoted. And no premiums are lower than \$500. By comparison, a special program for good, lower-income drivers in California – that is not subsidized either by taxpayers or by other drivers – charges annual premiums of no more than \$338, even to drivers in high-risk urban areas.

“The quoted prices, especially the nine exceeding \$2000, show that insurers either are overcharging lower-income consumers or are not interested in serving them,” said CFA’s Hunter. “Since state governments require purchase of auto insurance, state insurance commissioners have an obligation to address this issue. And the relatively new Federal Insurance Office should make the study of this problem a priority,” he added. Dodd-Frank legislation gave the FIO authority to “monitor the extent to which traditionally underserved communities and consumers, minorities, and low and moderate income persons have access to affordable insurance products.”

Table 1: Quoted Annual Premiums for a Typical Working Person With a Good Driving Record (see paragraphs above for her specific characteristics)

	Hartford	Baltimore	Chicago	Houston	Oakland
State Farm	\$949	\$1225	\$624	\$1034	\$541
Allstate	3222	3008	1654	1366	608
GEICO	1299	1971	1013	783	922
Progressive	1498	1818	886	1406	736
Farmers	2540	2806	2860	1666	827
Liberty	1913	2116	NQ	1373	1231
Nationwide	NQ	1320	826	696	952
Travelers	2364	4182	2000	1730	883

Differences Among Large Auto Insurers in Use of Education and Income in Rate-Making

Five of the ten largest auto insurers – GEICO, Progressive, Liberty Mutual, Farmers, and American Family -- apparently use education and occupation in their rate-making in most states.

GEICO uses education and occupation in its rate-making across the country. In many states, it gives equal weight to each. For example, in Hartford a factory worker would pay 28 percent more than a factory superintendent (\$1299 vs. \$1018), but a factory worker would pay 28 percent more with a high school degree than with a college degree (again \$1299 vs. \$1018). In Seattle, however, the GEICO website did not inquire about occupation but charged a factory worker with a high school degree 45 percent more than a factory worker with a college degree

(\$870 vs. \$599). And in Atlanta the website did not inquire about either education or occupation.

Progressive tends to give somewhat greater weight to education than to occupation. For example, in Louisville it charged a factory worker only one percent more than a plant superintendent (\$2390 vs. \$2357), but charged a factory worker with a high school degree seven percent more than the factory worker with a college degree (\$2390 vs. \$2228). Like GEICO, in Seattle the website did not inquire about occupation but charged progressively less as educational level increased – an annual premium of \$1134 for no high school degree, \$1042 for a high school degree, \$964 for a college degree, and \$946 for a graduate degree. And like GEICO, in Atlanta the website did not inquire about either education or occupation.

As indicated earlier, Liberty's quotes for a high school graduate were usually 10-13 percent higher than quotes for a college graduate. In one state, California, the insurer apparently also uses occupation as a rate-making factor. In Oakland, its quoted annual premium was \$1074 for a factory workers and \$892 for an executive.

Farmers' quotes made distinctions between certain professionals and civil servants and "others." In different cities, the "others" consistently were charged five percent higher rates.

American Family was difficult to research because its website required information about an actual, rather than a hypothetical, driver. However, it did ask for specific information about occupation, though it is not clear how the insurer factored that information into its rate-making.

State Farm, Allstate, USAA, Nationwide, and Travelers apparently do not use education or occupation in their rate-making, at least in the ten states studied.

"We commend auto insurers who are not using education and occupation in their rate-making," said CFA's Brobeck. "One reason insurance commissioners should address this issue is because these insurers may well feel pressured to adopt the discriminatory practices of GEICO and Progressive," he added.

Allstate's website did not ask for specific information about occupation but did require one to indicate whether one was employed or unemployed in many states, and in some states, to identify certain occupations such as firefighter or policeman, though it is not clear how Allstate used any of this information in rate-making.

Only in California did Travelers' website ask for specific information about occupation, though it is not clear how the insurer uses this information in rate-making in that state.

CFA Continues Campaign for Fair, Affordable Rates for Low- and Moderate-Income Drivers Required to Purchase Auto Insurance in All States But New Hampshire

The Consumer Federation of America is a non-profit association of nearly 300 non-profit consumer groups that was established in 1968 to advance the consumer interest through research, education, and advocacy. In the past 18 months, CFA has released a series of reports showing

that low- and moderate-income drivers in urban areas are charged high, and often unaffordable, auto insurance premiums for the minimum liability coverage required by all states except New Hampshire. These reports also reveal discriminatory practices that disadvantage drivers who are single, rent, lack continuous insurance coverage, live in moderate-income area, and in this latest analysis, have less education or work in low-paying, low-status occupations. These reports can be found on the CFA website, www.consumerfed.org.

To help make auto insurance more affordable to working people, CFA is working to curtail the use of discriminatory factors in rate-making and to create state programs, such as the one in California, that allows lower-income, good drivers to buy required liability coverage at reasonable rates.

EXHIBIT B

EXHIBIT B - § 2632.5. Rating Factors

(d) In addition to the rating factors set forth in subdivision (c), an insurer's class plan, and all rates and premiums determined in accordance therewith, may utilize the following optional rating factors (the "Optional Factors"):

- (1) Type of vehicle;
- (2) Vehicle performance capabilities, including alterations made subsequent to original manufacture;
- (3) Type of use of vehicle (pleasure only, commute, business, farm, commute mileage, etc.);
- (4) Percentage use of the vehicle by the rated driver;
- (5) Multi-vehicle households;
- (6) Academic standing of the rated driver;
- (7) Completion of driver training or defensive driving courses by the rated driver;
- (8) Vehicle characteristics, including engine size, safety and protective devices, damageability, repairability, and theft deterrent devices;
- (9) Gender of the rated driver;
- (10) Marital status of the rated driver;
- (11) Persistency:

(A) At policy renewal, persistency credit may be applied by an insurer or affiliate for the current named insured. Persistency credit may also be applied when issuing a separate new automobile policy for a person who is not the named insured on a policy, but is otherwise currently insured.

(B) An insurer shall not apply a persistency credit for a new policy issued to an individual, unless that individual is currently insured. Nor shall any insurer apply persistency, at any time, when based in whole or in part upon automobile insurance coverage provided by a non-affiliated insurer.

(C) This subsection shall not be construed to expand or restrict an insurer's ability to obtain evidence of a person's driving safety record. However, when such evidence concerns proof of prior insurance, this subsection shall apply.

(D) For purposes of this subsection, "currently insured" means a person who is presently covered for automobile insurance by the insurer or affiliate, other than as an unnamed person who is covered under a permissive user or similar provision.

(E) As used in this subsection, "affiliate" has the same meaning as defined in [California](#)

[Insurance Code section 1215.](#)

(12) Non-smoker;

(13) Secondary Driver Characteristics. For drivers not assigned as a primary or secondary driver to another vehicle, this factor may be composed of a combination of the following factors: Safety Record, Years Licensed, Gender, Martial Status, Driver Training, and Academic Status;

(14) Multi-policies with the same, or an affiliated, company;

(15) Relative claims frequency. This factor shall contain a maximum of twenty categories and shall reflect where the insured vehicle is garaged. These categories shall be based on grouping the zip codes in the state into bands. Alternately, the bands could be based on grouping the census tracts in the state. Each band shall contain areas with a similar average claims frequency. In the event that the data for a zip code or census tract is not fully credible, the adjustment process described in Section 2632.9(d) shall be followed;

(16) Relative claims severity. This factor shall contain a maximum of twenty categories and shall reflect where the insured vehicle is garaged. These categories shall be based on grouping the zip codes in the state into bands. Alternately, the bands could be based on grouping the census tracts in the state. Each band shall contain areas with a similar average claims severity. In the event that the data for a zip code or census tract is not fully credible, the adjustment process described in Section 2632.9(d) shall be followed.