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Advocates for CONSUMER FEDERATION OF CALIFORNIA EDUCATION FOUNDATION

BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA

Request for Rulemaking to address COVID-19
Impact on Auto Insurance Rates and Premiums

ENSURING POLICYHOLDERS ARE NOT
OVERCHARGED IN WAKE OF
SIGNIFICANT REDUCTION IN MILES
DRIVEN

**CONSUMER FEDERATION OF
CALIFORNIA EDUCATION
FOUNDATION'S PETITION FOR
HEARING, PETITION TO
PARTICIPATE, AND NOTICE OF
INTENT TO SEEK COMPENSATION**

**[Ins. Code § 1861.10; Cal. Code Regs, tit.
10, §§ 2653.1, 2661.2 and 2661.3]**

On March 13, 2020 Warren Buffett, Chairman and CEO of Geico's parent company Berkshire Hathaway, told [Yahoo Finance](#) that the reduction in driving as a result of the COVID-19 outbreak is showing up in the form of fewer accidents, according to Geico's claim data.¹ [Reporting from China](#) calls the reduction in car accident claims a "coronavirus silver lining" for insurers.² Golden Gate



¹ <https://finance.yahoo.com/video/exclusive-warren-buffett-coronavirus-impact-124544516.html>

² <https://www.insurancejournal.com/news/international/2020/03/12/560943.htm>

1 Bridge traffic is off by 70 percent during rush hour, [according to bridge officials](#).³ With a
2 statewide Stay at Home order now in effect, the decline in traffic and accidents will reduce auto
3 insurance losses substantially over the course of this crisis. According to the Department's most
4 recent market share report, personal and commercial auto insurers incurred about \$21.8 billion
5 in auto accident claims in 2018. That is about \$419 million per week in accident claims. Even
6 just a 25 percent drop in accidents due to COVID-19 restrictions will result in a half billion
7 dollar decline in insurance claims in less than five weeks. As yet, however, no insurer (to our
8 knowledge), has acted to credit policyholders any amount of premium reduction to account for
9 their reduced driving and resulting risk reduction.

10 Therefore, Consumer Federation of California Education Foundation (CFCEF)
11 hereby requests that the Insurance Commissioner schedule a public hearing pursuant to
12 California Insurance Code (CIC) sections 1861.05(c) and 1861.10(a) and section 2653.1 of Title
13 10 of the California Code of Regulations ("10 CCR") to ensure that companies selling personal
14 and commercial automobile insurance in California provide immediate and appropriate relief to
15 policyholders whose premium has become excessive as a result of the considerable reduction in
16 risk of loss stemming from mandated sheltering in place and other effects of the COVID-19
17 pandemic. It cannot be understated how severe this crisis is becoming for lower- and middle-
18 income workers: as Bureau of Labor Statistics data reveal, less than 1 in 10 Americans with
19 earnings in the lowest quartile can conduct their work from home, and only 1 in 5 of those with
20 earnings at the 25th to 50th percentile of earnings can continue their work from home.⁴ With
21 millions of Californians facing extraordinary financial stress, it is critical that they are protected
22 from overpaying for their auto insurance at this time of dramatically reduced driving.

23 We understand that rules restricting public gatherings may make it infeasible to
24 hold a traditional hearing pursuant to this request, so we request that the Commissioner make
25 accommodations to conduct a digitally-based public hearing if necessary. Further, because the

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27
28 ³ <https://www.sfexaminer.com/news/golden-gate-bridge-officials-seek-emergency-funding-after-traffic-plummets-70-percent/>

⁴ Source: Bureau of Labor Statistics <https://www.bls.gov/news.release/flex2.t01.htm>

1 need for relief is pressing given the far-reaching economic consequences of the pandemic, we
2 also request that the Commissioner issue a bulletin to insurers directing companies to provide
3 customers with an opportunity to get immediate relief if they have significantly reduced their
4 driving in response to the pandemic. The petition of Consumer Federation of California
5 Education Foundation respectfully shows that:

6 **I. The Statewide “Stay At Home” Order and Broad Impact of COVID-19,**
7 **Has Dramatically Reduced Driving and Will Reduce Insurance Losses**

8 1. In response to the COVID-19 pandemic, tele-working, layoffs, business closures,
9 closures of schools, childcare centers, and colleges, and the March 19, 2020 “Stay at Home”
10 order issued by California Governor Gavin Newsom, has led millions of California drivers to
11 radically reduce the amount of driving they do on a daily basis. This unprecedented reduction in
12 driving will likely last several weeks and possibly months. The change to the traffic patterns on
13 California’s streets and freeways cannot be overstated, as exhibited by the *Los Angeles Daily*
14 *News* photograph of the normally-jammed 405 freeway.



25 Traffic moves along at 65mph+ on a nearly empty 405 Freeway near the 101 Freeway in Sherman Oaks, CA Wednesday, March 18, 2020.
26 All schools are closed, many businesses are closed and commuters are working from home leaving the freeways without traffic jams. (Photo
27 by David Crane, Los Angeles Daily News/SCNG)

28 2. With so many drivers staying home and not driving, it is clear that the frequency
of accidents and claims will be sharply reduced for the foreseeable future, as indicated by
Warren Buffett’s aforementioned data, which predates the Stay at Home order. Further, with
driving in California generally limited to meeting essential needs such as doctor appointments
CONSUMER FEDERATION OF CALIFORNIA EDUCATION FOUNDATION'S PETITION FOR HEARING,
PETITION TO PARTICIPATE, AND NOTICE OF INTENT TO SEEK COMPENSATION - 3

1 and grocery shopping, it is likely that most driving will be local and at lower speeds, suggesting
2 a reduction in accident severity that further reduces insured losses during this crisis. As a result
3 of the reduction in miles and the corresponding reduction in losses, auto insurers' rates are
4 quickly becoming excessive to the extent that policyholders' premiums are not reduced
5 accordingly.

6 **II. Auto Insurance Premiums Are Determined, to a Significant Degree, By a**
7 **Policyholder's Miles Driven.**

8 3. Pursuant to Insurance Code Section 1861.02 (a), the second most important
9 factor in determining drivers' premiums is "the number of miles he or she drives annually."
10 That is, other than the impact of a policyholder's driving safety record, no single factor affects
11 the amount that Californians pay for auto insurance than how many miles they are driving. As
12 such, a reduction in the number of miles driven by a policyholder should lead to a reduction in
13 their premium. This is not only a widely agreed upon actuarial standard, it is easily understood
14 by consumers. If someone cuts their driving in half and is on the road much less, everyone
15 understands that their likelihood of causing an accident will also fall substantially and the
16 amount they pay for coverage should follow.

17 4. Generally, insurers rate individual policyholders based on estimated prospective
18 mileage, typically on the basis of prior experience. However, companies may re-rate drivers
19 mid-policy when there is a change to their estimated miles driven. In a non-pandemic
20 environment, this might be the result of a change in jobs that requires a significantly shorter
21 daily commute or a retirement that ends the daily commute altogether. The current pandemic
22 has led to something entirely different than the individual changes that occur in the normal
23 course of an insurer's book of business. Indeed, while it is fair that a policyholder with a
24 commute reduction should see a concomitant premium reduction (and any consumer with such a
25 change in mileage has a right to expect and get their premium reduction), if they do not report
26 this change and continue to pay the premium rated at the higher mileage level, their individual
27 overpayment is unlikely to lead to an insurance company windfall or overall excessive rate for
28 the book of business. But in this pandemic, if consumers do not get relief for their reduced

1 mileage, not only will millions of Californians be overpaying, but companies will earn an
2 unapproved windfall resulting from an, albeit understandably, poor prediction of the risk level
3 of their book.

4 **III. Rules Should Be Adopted That Require Companies to Notify Customers**
5 **of Their Right to Be Re-Rated and to Re-Rate Them When a Local or Statewide**
6 **Emergency Reduces Miles Driven.**

7 5. Although consumers can request to be re-rated due to changes in their mileage
8 factor, when a state of emergency, such as the current COVID-19 pandemic, broadly impacts
9 drivers, the onus of re-rating should be shifted to the insurance carriers. Rules, with this goal,
10 could require that companies contact all policyholders and provide a mechanism for customers
11 to attest to their reduced driving as a result of the emergency on a monthly or quarterly basis.
12 Companies could then re-rate customers based on the current annual mileage and use premium
13 offset payments, reduced installment payments, or refunds of excessive premium, to ensure
14 appropriate premiums are charged given the changes to the risk of loss.

15 **IV. The Insurance Commissioner Should Immediately Issue a Bulletin**
16 **Directing Insurers to Develop Mechanisms for Informing and Re-Rating Customers in**
17 **Light of the Current Emergency.**

18 6. The current crisis reveals the need for a rule governing rating of drivers in the
19 event of future emergencies of this scale, but the need for relief is immediate. As such, along
20 with a petition for hearing, CFCEF urges the Commissioner to issue a bulletin to all auto
21 insurers directing them to provide the relief described herein. As companies are prohibited from
22 charging excessive rates, and as the emergency orders from the Governor will have the effect of
23 reducing insured losses to a significant degree attributable to the reduced driving, companies
24 must reduce the premium charged to consumers based on that reduction to avoid charging
25 excessive rates. CFCEF offers to work with the Department and insurers to help devise a fair
26 and effective mechanism for meeting this urgent need in the interim while the Commissioner
27 conducts a hearing to establish a rule to address future such crises.

28 **V. PETITIONER**

1 7. CFCEF is a non-profit 501(c)(3) education and research foundation that
2 advocates for consumer interests. Founded in 1999 as a charitable organization sponsored by the
3 non-profit Consumer Federation of California, the central purpose of this organization has been,
4 and continues to be, to serve as an education and research organization, to promote educational
5 programs and public forums in the field of consumer rights and other policy issues that may be
6 of interest to consumers in order to improve the quality of life of all people, to represent
7 consumers and the interests of consumers, including working people, families, retirees, children,
8 utility ratepayers, insurance policyholders and others, for the purpose of participating in
9 administrative, department and commission proceedings, regulatory proceedings, legislative
10 advocacy, public awareness and advocacy campaigns, and litigation within the maximum legal
11 limits allowed of a 501(c)(3) tax-exempt corporation under Federal and California law.

12 8. To achieve its consumer advocacy goals, the CFCEF maintains staff
13 and consultants to continuously monitor legislative, regulatory and other public issues affecting
14 California consumers in order to effectively represent consumers and promote or oppose
15 policies and decisions that affect them. The primary business address of Consumer Federation
16 of California Education Foundation is 1153 Chess Drive, Suite 204, Foster City, CA 94404 and
17 the phone number is 415-597-5710. On September 4, 2018, CFCEF was deemed eligible to seek
18 compensation in CDI proceedings pursuant to CIC section 1861.10 by order of Insurance
19 Commissioner Dave Jones. The finding of eligibility is effective for two years.

20 **VI. NOTICE OF INTENT TO PARTICIPATE AND AUTHORITY FOR**
21 **PETITION TO PARTICIPATE.**

22 9. Consumer Federation of California Education Foundation also hereby requests
23 that it be granted leave to participate in the rulemaking proceeding pursuant to CIC section
24 1861.10, which provides that "[a]ny person may initiate or intervene in any proceeding
25 permitted or established pursuant to this chapter [Chapter 9 of Part 2 of Division 1 of the
26 California Insurance Code] ... and enforce any provision of the article." The proceeding in this
27 matter is a rulemaking proceeding to implement Insurance Code Section 1861.05, making it a
28 proceeding both "permitted" and "established" pursuant to the chapter. The right of Consumer

1 Federation of California Education Foundation to participate is also authorized pursuant to 10
2 CCR §2661.1 *et seq*, including §2661.2, which states that "[a]ny person shall be permitted to
3 intervene in any proceeding on any rate application or any proceeding subject to Chapter 9 of
4 Part 2 of Division 1 of the California Insurance Code if the issues to be raised by the intervenor
5 or participant are relevant to the issues of the proceeding." As is set forth in Sections I through
6 IV of this petition, CFCEF has raised issues directly related to the implementation of California
7 law and relevant to the issues of the proceeding. As a recognized representative of consumers in
8 California, CFCEF will add both expertise and an efficient representation of all California
9 policyholders who will be affected by this proceeding.

10 **VI. VERIFICATION OF PARTICIPATION.**

11 10. Consumer Federation of California Education Foundation will submit testimony
12 and fully participate in all aspects of the proceeding. In accordance with 10 CCR §2661.3,
13 CFCEF verifies that it will be able to attend and participate in this proceeding without
14 unreasonably delaying this proceeding or any other proceedings before the Insurance
15 Commissioner.

16 **VII. PETITIONER'S INTEREST**

17 11. CFCEF's interest in the above captioned proceeding is to ensure that consumers
18 who purchase insurance policies in California are charged rates that comply with California law,
19 specifically with CIC section 1861.05, which prohibits rates that are "excessive, inadequate,
20 unfairly discriminatory or otherwise in violation of this chapter" and section 1861.02.

21 **VIII. INTENT TO SEEK COMPENSATION**

22 12. Pursuant to CIC section 1861.10 and 10 CCR §2661.3, CFCEF intends to seek
23 compensation in this proceeding. CFCEF's estimated budget is attached as Exhibit A. CFCEF
24 has based this budget on the technical expertise and regulatory experience needed to address the
25 issues of concern in the proceeding; its best estimate of the amount of time needed to participate
26 in and contribute to the proceeding, taking into account both the amount of time that has already
27 been spent by CFCEF staff and expert consultants and an estimate of time needed to complete
28 the tasks required for a rulemaking hearing as requested here; and the past experience of

CFCEF's California's consultants in similar proceedings. CFCEF presents the attached budget as a preliminary estimate and reserves the right to amend the budget as time and other expenses required to participate in this proceeding become more certain, or in its request for final compensation. CFCEF give notice of such modifications as soon as it is practicable and will comply with 10 CCR §2661.3 (d) concerning budget revisions. We believe that this estimated budget is a reasonable reflection of the required staffing level and other expenses for a proceeding such as this.

WHEREFORE, Consumer Federation of California Education Foundation requests that the Insurance Commissioner grant its petition for hearing and petition to participate in the rulemaking proceeding initiated to correct these regulations.

DATED: March 23, 2020

Respectfully submitted,

Richard Holober
Douglas Heller
Consumer Federation of California Education Foundation

By: 

Douglas Heller for
Consumer Federation of California Education Foundation

**VERIFICATION OF DOUGLAS HELLER IN SUPPORT OF
CONSUMER FEDERATION OF CALIFORNIA'S PETITION FOR HEARING,
PETITION TO PARTICIPATE, AND NOTICE OF INTENT TO SEEK
COMPENSATION**

I, Douglas Heller, verify:

1. I am an advocate retained by Consumer Federation of California Education Foundation. If called as a witness, I could and would testify competently to the facts stated in this verification.

2. I personally prepared the pleading titled, "Consumer Federation of California Education Foundation's Petition for Hearing, Petition to Participate, and Notice of Intent to Seek Compensation" filed in this matter. All of the factual matters alleged therein are true of my own personal knowledge, or I believe them to be true after I conducted some inquiry and investigation.

3. Pursuant to California Code of Regulations, title 10, section 2661.3, Consumer Federation of California Education Foundation attaches as Exhibit A its estimated budget in this proceeding.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed March 23, 2020, at Los Angeles, California.



Douglas Heller

EXHIBIT A

PRELIMINARY BUDGET

ITEMS

ESTIMATED COST

1. Advocates

Douglas Heller @ \$325 per hour, 15 hours..... \$4,875

- Draft and edit petition for hearing and petition to participate; confer with Consumer Federation of California Education Foundation (CFCEF) staff regarding proceeding; conduct research and prepare hearing testimony; participate in hearing; prepare request for compensation.

Richard Holober @ \$275 per hour, 10 hours..... \$2,750

- Confer with CFCEF advocates and experts regarding proceeding; participate in hearing.

Travel..... \$0

Total Estimated Budget \$7,625

1
2 **PROOF OF SERVICE**
3 **[BY OVERNIGHT OR U.S. MAIL, FAX TRANSMISSION,**
4 **EMAIL TRANSMISSION AND/OR PERSONAL SERVICE]**

5 **State of California, City of Foster City, County of San Mateo**

6 I am employed in the City of Foster City and County of San Mateo, State of California. I am
7 over the age of 18 years and not a party to the within action. My business address is 1153 Chess
8 Drive, Suite 204, Foster City, CA 94404, and I am employed in the city and county where this
9 service is occurring.

10 On March 23, 2020, between 10:00 AM and 11:00 AM, I caused service of true and correct
11 copies of the document entitled

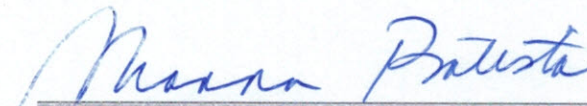
12 **CONSUMER FEDERATION OF CALIFORNIA EDUCATION FOUNDATION'S PETITION**
13 **TO PARTICIPATE AND NOTICE OF INTENT TO SEEK COMPENSATION**

14 upon the persons named in the attached service list, in the following manner:

- 15 1. If marked FAX SERVICE, by facsimile transmission this date to the FAX number stated
16 to the person(s) named.
- 17 2. If marked EMAIL, by electronic mail transmission this date to the email address stated.
- 18 3. If marked U.S. MAIL or OVERNIGHT or HAND DELIVERED, by placing this date
19 for collection for regular or overnight mailing true copies of the within document in
20 sealed envelopes, addressed to each of the persons so listed. I am readily familiar with
21 the regular practice of collection and processing of correspondence for mailing of U.S.
22 Mail and for sending of Overnight mail. If mailed by U.S. Mail, these envelopes would
23 be deposited this day in the ordinary course of business with the U.S. Postal Service. If
24 mailed Overnight, these envelopes would be deposited this day in a box or other facility
25 regularly maintained by the express service carrier, or delivered this day to an authorized
26 courier or driver authorized by the express service carrier to receive documents, in the
27 ordinary course of business, fully prepaid.

28 I declare under penalty of perjury that the foregoing is true and correct.
Executed on March 23, 2020 at Foster City, California.

Shanna Batista


signature

SERVICE LIST

Person Served

Method of Service

<p>Daniel Goodell Rate Enforcement Bureau Chief California Department of Insurance 45 Fremont Street, 21st Floor San Francisco, CA 94105 Tel. No.: (415) 538-4111 Fax No.: (415) 904-5490 Daniel.Goodell@insurance.ca.gov Tina.Warren@insurance.ca.gov</p>	<p><input type="checkbox"/> FAX <input type="checkbox"/> U.S. MAIL <input type="checkbox"/> OVERNIGHT MAIL <input type="checkbox"/> HAND DELIVERED <input checked="" type="checkbox"/> EMAIL</p>
<p>Bryant Henley Deputy Commissioner, Office of the Special Counsel California Department of Insurance 300 Capitol Mall, Sacramento, CA 95814 Tel. No.: (916) 492-3558 Fax No.: (916) 324-1883 bryant.henley@insurance.ca.gov</p>	<p><input type="checkbox"/> FAX <input type="checkbox"/> U.S. MAIL <input type="checkbox"/> OVERNIGHT MAIL <input type="checkbox"/> HAND DELIVERED <input checked="" type="checkbox"/> EMAIL</p>
<p>Ken Allen Deputy Commissioner, Rate Regulation California Department of Insurance 45 Fremont Street, 21st Floor San Francisco, CA 94105 Tel. No.: (415) 538-4381 Fax No.: (415) 904-5490 allenk@insurance.ca.gov</p>	<p><input type="checkbox"/> FAX <input type="checkbox"/> U.S. MAIL <input type="checkbox"/> OVERNIGHT MAIL <input type="checkbox"/> HAND DELIVERED <input checked="" type="checkbox"/> EMAIL</p>
<p>Edward Wu Staff Counsel and Public Advisor Office of the Public Advisor California Department of Insurance 300 South Spring Street, 12th Floor Los Angeles, CA 90013 Tel. No.: (213) 346-6635 Fax No.: (213) 897-9241 edward.wu@insurance.ca.gov</p>	<p><input type="checkbox"/> FAX <input type="checkbox"/> U.S. MAIL <input type="checkbox"/> OVERNIGHT MAIL <input type="checkbox"/> HAND DELIVERED <input checked="" type="checkbox"/> EMAIL</p>

PROOF OF SERVICE