American Property Casualty Insurance Association
INSURING AMERICA apci.org

VIA EMAIL

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RE: Insurance Commissioner Matter R 2021-07 (CR-101)

The following comments on the above-referenced matter are submitted on behalf of the members of the American Property Casualty Insurance Association (APCIA) – a national property casualty trade association that promotes and protects the viability of private competition for the benefit of consumers and insurers. APCIA member companies write approximately 36.9 percent of all personal lines insurance sold in Washington.

The Office of Insurance Commissioner (OIC) should allow the emergency rule temporarily prohibiting the use of credit history in personal lines (R 2021 -02) (Emergency Rule) to expire at the end of the 120 days permitted for an Emergency Rule under RCW 34.05.350.[1] Insurers should be permitted to reinstate their previously approved rates and continue to utilize credit history in their underwriting and rating practices.

Notwithstanding legal challenges currently pending in Thurston County Washington Superior Court, adopting the Emergency Rule without allowing a complete base rate repricing by insurers in compliance with RCW 48.19.020 and WAC 284-24-065 necessarily results in rates that are excessive, inadequate, or unfairly discriminatory. When the Commissioner arbitrarily prohibited insurers from considering one of the most important, if not *the* most important, rating factor available for predicting the risk of future loss and related insurance costs, it disrupted the inter-relationship of all the remaining rating factors and their collective role in accurately matching price with risk as the law requires.

The prior rate filings were approved by the OIC and therefore deemed not to be excessive, inadequate, or unfairly discriminatory (alternatively "the rate standard"). During the previous review process, the filings and insurance scoring models were subject to in-depth and rigorous review, including the multi-variate analysis required by WAC 284-24A-045 through -065. Undertaking this analysis often resulted in adjustments to other rating factors to satisfy the rate standard. The distortion created in those rating and pricing structures by the removal of a significant component (credit history) necessarily violates the rate

[1] On July 15, 2021, OIC adopted an emergency rule effective the same date prohibiting the use of credit history, consistent its predecessor R 2021 -02, except that the July 15 emergency rule expires on November 12, 2021.

standard. The resulting distortion has resulted in new rates that are excessive for many policyholders, inadequate for many others, and unfairly discriminatory for most. This has led to surcharges for many policyholders and subsidies for many others without any relationship to the level of risk and claims history. The removal of credit history in calculating an insured's premium without adjustments to other rating factors means that there is no assurance the company's rate filing complies with the rate standard of RCW 48.19.020 and WAC 284-24-065.

Although the Commissioner contends that the original Emergency Rule was permitted due to the Governor of the State of Washington's proclamation number 20-05 and RCW 48.02.060, APCIA disputes this position, and the matter is currently being litigated. Regardless of the outcome of that litigation, however, any proposed permanent rule cannot rely on the emergency power's authority once the emergency ends. For that reason, after the expiration of the current state of emergency due to COVID 19, any permanent rule dealing with credit history must be based only on the authority granted to the Commissioner by the Legislature, including the rulemaking authority for the use of credit history under RCW 48.19.035(5). This specific authority governs the rule making for the use of credit history considering RCW 48.01.150 which states:

> *Provisions of this code relating to a particular kind of insurance or a particular type of insurer or to a particular matter prevail over provisions relating to insurance in general or insurers in general or to such matter in general.*

In addition, the CR-101 document for the permanent rule making states that RCW 48.19.035 authorizes such rulemaking. This is not correct. RCW 48.19.035(5) specifically addresses the filing and permitted use of credit history including the method of determining that rates are not unfairly discriminatory. The Commissioner does not have the authority to ban the use of credit history as that authority has not been granted to the Commissioner by the Legislature.

The Commissioner states in CR-101 that "[t]he result of the CARES Act is that all credit bureaus are collecting a credit history that is objectively inaccurate for some consumers." However, he fails to provide any evidence to support this statement. He similarly offers no evidence for the proposition that consumers will see their credit-based insurance scores drop once the CARES Act expires. In fact, an August 2020 report from the Consumer Financial Protection Bureau, *The Early Effects of the COVID-19 Pandemic on Consumer Credit,* finds "through June 2020 consumers did not experience many of the negative credit consequences that might be expected during periods of high unemployment and large income shocks."[2]

[2] Consumer Financial Protection Bureau, *The Early Effects of the COVID-19 Pandemic on Consumer Credit* (August 2020), available at https://files.consumerfinance.gov/f/documents/cfpb_early-effects-covid-19-consumer-credit_issue-brief.pdf (accessed July 29, 2021).

A follow-up report issued in April, *Changes in consumer financial status during the early months of the pandemic,*[3] finds much the same, directly contradicting the Commissioner's allegations.

If the emergency ban remains in place, rather than banning the use of credit history, OIC should consider modifying the current rate stability rule found in WAC 284-24-130. This modification could be designed to provide relief to those insureds who requested an accommodation under the provisions of the CARES Act by maintaining their pre-pandemic credit score for a set period while not penalizing insureds who maintained or improved their credit score during the pandemic. In making this modification, insurers should be allowed to revert to their previously approved rate filing with the submission of a rate stability rule.

A rate stability rule could also incorporate some of the components of the National Council of Insurance Legislators (NCOIL) *Model Act Regarding Use of Credit Information in Personal Insurance – Sec. Six - Extraordinary Life Circumstance.* Despite the Commissioner's recent public statements, these standards were drafted and adopted by NCOIL and are in-force in 29 states. The use of the standards could be adopted by administrative rule and the actual rating rules filed with the OIC for review and approval to ensure they are uniformly and fairly applied by insurers.

Alternatively, the OIC should consider modifying their rules for permitted elements utilized to develop credit-based insurance scores to disregard data that reflects CARES Act accommodations. These elements are identified in data held by credit bureaus through certain data codes. Those codes are "natural disaster," "forbearance," and "deferment." This proposed directive is similar to the previously established guidelines in WAC 284-24A-055(2)(a) and (b) dealing with no hit (no credit history) and thin files (insufficient credit history to generate a score).

In addition, the OIC should consider a robust stakeholder process including industry meetings with both insurers and credit-based insurance score modeling vendors to discuss what if any changes could be made to scoring models to exclude debt information associated with a CARES Act accommodation. Further, OIC should consult with financial experts to determine the appropriate time frame for this extraordinary relief. The three-year period appears to be arbitrary and not based on any meaningful data. It is unclear how and why the Commissioner chose the three-year time frame for prohibiting the use of credit history for rating purposes. The rationale for this time frame should be set forth as it clearly will extend beyond the declared emergency.

If the Commissioner continues this rulemaking exercise, immediate steps will need to be taken to revise the underlying manual of classification, manual of rules and rates so that they meet the rate standard of RCW 48.19.020. The Commissioner must permit companies to submit updated base rate filings and establish a review standard or process that allows for prompt approval within the standard thirty-day

3 Consumer Financial Protection Bureau, *Changes in consumer financial status during the early months of the pandemic* (April 2021) available at https://files.consumerfinance.gov/f/documents/cfpb_making-ends-meet-wave-2_report_2021-04.pdf (accessed July 29, 2021).

review period of RCW 48.19.060. The OIC's historical lack of timely review and approval of personal lines rate filings must not be a barrier to insurers revision of rating factors to prohibit excessive, inadequate or unfairly discriminatory rates. To that end, the Commissioner should consider establishing a filing certification process analogous to that set forth in RCW 48.18.100 (3) and (6) as well as RCW 48.19.080 and permit the use of the revised rates until such time as the certified filing is withdrawn by the insurer or Commissioner under the standards of RCW 48.19.120.

We thank you for the opportunity to submit these comments.

Sincerely,

Mark Sektnan
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American Property Casualty Insurance Association