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Rules Coordinator
Office of the Washington Insurance Commissioner
P.O. Box 40255
Olympia, WA 98504-0255

Filed Online via Rules Coordinator

Re: Comment on WSR 21-113-131, possible rule making on the temporary prohibition on use of credit history on some personal lines, Insurance Commissioner Matter R 2021-07

To Whom It May Concern,

I write on behalf of the Consumer Data Industry Association ("CDIA") to respectfully oppose rulemaking on the above captioned proposal to prohibit the use of credit histories on some personal lines on insurance.[1] The Consumer Data Industry Association makes the following points: *First*, consumer reports are highly accurate. *Second*, the credit reporting dispute system resolves disputes quickly, efficiently, and to consumers' satisfaction. *Third*, the CARES Act is working as expected and consumers are benefiting. *Fourth*, The Commissioner's justification for the rule is built on imprecision, speculation and conjecture.

The Consumer Data Industry Association is the voice of the consumer reporting industry, representing consumer reporting agencies, including the nationwide credit bureaus, regional and specialized credit bureaus, background check and residential screening companies, and others. Founded in 1906, CDIA promotes the responsible use of consumer data to help consumers achieve their financial goals and to help businesses, governments, and volunteer organizations avoid fraud and manage risk. Through data and analytics, CDIA members empower economic opportunity all over the world, helping ensure fair and safe transactions for consumers, facilitating competition, and expanding consumers' access to financial and other products suited to their unique needs.

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[1] On March 22, 2021, the Office of the Insurance Commissioner ("Commissioner") issued WSR 21-07-1103, Insurance Commissioner Matter R 2021-02, an emergency rule temporarily prohibiting the use of credit history to determine premiums and eligibility for coverage in private automobile, homeowners, and renter's insurance products ("Emergency Rule"). On June 22, 2021, the Commissioner issued the present notice of possible rulemaking ("Notice of Possible Rulemaking"). WSR 21-113-131. Following the release of the Notice of Possible Rulemaking, the Commissioner issued R 2021-07, a "Stakeholder Draft" rule for a temporary prohibition on use of credit history on some personal lines ("Stakeholder Draft"). CDIA intends to comment on this release by the August 6 comment deadline for that release.

1. Credit reports are highly accurate

Accuracy is the lifeblood of the credit reporting system, and credit bureaus already have a high degree of accuracy. The credit bureaus' hard work is proven by several reports and studies that withstand rigorous academic and scientific scrutiny. This rigorous academic work stands in contrast to comments by the Commissioner leading up to the rulemaking[2] and in the rulemaking itself. These comments are either not supported by empirical research, based on speculation and conjecture, or both.

In addition to this empirical research, there are government agency observations. The Federal Trade Commission ("FTC") said that there is a "market incentive[] to maintain and improve the accuracy and completeness of [credit] reports."[3] The Federal Reserve Board highlighted the reliability that credit reports provide when it said that "[o]verall, research and creditor experience has consistently indicated that credit reporting company information…generally provides an effective measure of the relative credit risk posed by prospective borrowers."[4]

A high accuracy rate is proven in several studies. In 2011, the Policy and Economic Research Council ("PERC") looked at over 81,000 credit accounts on consumers' credit reports. This study was the most comprehensive and statistically sound study ever performed on the accuracy of data collected and maintained by Equifax, Experian, and TransUnion. The study was also the first (and only) third-party, peer-reviewed study dealing with credit report errors and their material effect on consumers' creditworthiness. In this study, just 0.93% of all credit reports examined by the consumers prompted a dispute that resulted in a credit report correction and an increase of a credit score of 25 points or greater.[5]

The FTC accuracy study from 2012 showed that just 2.2% of participants had errors in their reports that lowered their score tier by one or more tiers, like moving from nonprime to subprime,[6] showing a nearly 98% accuracy rate. Since the 2012 FTC Report was published, a great deal has

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[2] See, press release, https://www.insurance.wa.gov/news/kreidler-insurance-ceos-time-put-racial-justice-pledge-work-join-effort-ban-credit-scoring, July 15, 2020.

[3] Federal Trade Commission, *Report to Congress Under Sections 318 and 319 of the Fair and Accurate Credit Transactions Act of 2003*, 7 (Dec. 2004), http://www.ftc.gov/reports/facta/041209factarpt.pdf. ("2004 FTC Report").

[4] Robert B. Avery *et al.*, *An Overview of Consumer Data and Consumer Reporting*, Federal Reserve Bulletin, 50-51 (Feb. 2003), (citations omitted), http://www.federalreserve.gov/pubs/bulletin/2003/0203lead.pdf; *See also*, Robert B. Avery *et al.*, *Credit Reporting Accuracy and Access to Credit, Federal Reserve Bulletin*, 320 (Summer 2004), https://www.federalreserve.gov/pubs/bulletin/2004/summer04_credit.pdf.

[5] Michael A. Turner *et al.*, *U.S. Consumer Credit Reports: Measuring Accuracy and Dispute Impacts*, Policy and Research Council ("PERC"), 8 (May 2011), https://www.perc.net/wp-content/uploads/2013/09/DQreport.pdf. ("PERC Study").

[6] Federal Trade Commission, *Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003*, A-4 (Dec. 2012), http://www.ftc.gov/os/2013/02/130211factareport.pdf.

occurred. For example, the CFPB began supervising the nationwide credit bureaus; far less medical debt and public records appear on credit reports; documents submitted from consumers with disputes are scanned and shared with furnishers, and major investments in technology have occurred.[7] To suggest a degradation in credit report accuracy is to ignore the advances that have been made to benefit consumers.

2. The credit reporting dispute system resolves disputes quickly, efficiently, and to consumers' satisfaction.

Accuracy is our north star. Accurate credit reports are driven by both the law[8] and competition.[9] Several consumer groups, including Consumer Reports, called the federal Fair Credit Reporting Act ("FCRA") "a robust law that gives consumers Fair Information Practices based rights. For example, consumers have the right to know about, inspect, dispute and correct their files. The FCRA requires purpose specificity before a report can be accessed."[10] Consumers are encouraged to review their credit reports at www.annualcreditreport.com, where they can obtain one free report per credit bureau per year. The nationwide credit bureaus also extended through early-2022, the ability of consumers to obtain one free report per credit bureau per week.

3. The CARES Act is working as expected and consumers are benefiting

On March 27, 2020, the President of the United States signed The Coronavirus Aid, Relief, and Economic Security Act ("CARES Act").[11] The CARES Act requires financial institutions who have helped consumers into an accommodation, to report that accommodation to the credit bureaus. The CARES Act is working exactly as it intended – to benefit consumers in times of financial hardship. Through a combination of legal relief, public assistance, and careful consumer control of their spending, many consumers are seeing their financial condition improve. This improvement does not take away, however, from those consumers who are still suffering under the weight of the pandemic.

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[7] Additional credit bureau innovations since the 2012 FTC Report include requiring debt collectors to include the name of the original creditor; retiring legacy data reporting formats and requiring all furnishers to report in the Metro 2® Format; and requiring the full date of birth to be reported for authorized users.

[8] 15 U.S.C. § 1681 *et seq.*

[9] *See, infra,* at n. 1 (The FTC wrote that there is a "market incentive[] to maintain and improve the accuracy and completeness of [credit] reports").

[10] *Oversight Hearing on Data Security, Data Breach Notices, Privacy and Identity Theft, Before the S. Comm. on Banking, Housing, and Urban Affairs*, 111th Cong. 5-6 (Sept. 22, 2005), https://www.banking.senate.gov/imo/media/doc/ACFDC9B.pdf (Testimony of Edmund Mierzwinski, U.S. PIRG on behalf of Consumer Federation of America, Consumers Union, Electronic Privacy Information Center (EPIC), Privacy Rights Clearinghouse, Privacy Times, U.S. Public Interest Research Group (U.S. PIRG), and World Privacy Forum) ("Consumer Groups").

[11] Pub. L. 116-136, 134 Stat. 281 (2020).

The Commissioner's finding "that the current protections to consumer credit history at the state and federal level have disrupted the credit reporting process [and] that [t]his disruption has caused credit-based insurance scoring models to be unreliable and therefore inaccurate..."[12] is not supported by the data. Even though millions of U.S. residents continue to feel the painful effects of the COVID-19 pandemic, the national average FICO score increased by seven points in 2020, the largest annual improvement in at least a decade.[13] Consumers reduced their credit card debt by 14%, which impacts credit utilization, and the portion of consumers with a subprime score decreased nearly 3%.[14] A FICO spokesperson said that for 2020, "[m]issed payments reported are down, consumer debt levels are decreasing and the significant steps taken by both the government [with] stimulus spending and private sector [with] lender payment accommodations to help consumers affected by COVID-19 are all contributing to this trend in average score."[15] The most recent consumer debt information continues to show positive results. In the U.S., in May 2021, the bank card default rate fell to 3.01% from 4.40% compared to the same period in 2020 and fell 0.22% from April 2021. The first mortgage default rate fell to 0.28% from 0.52% compared to the same period in 2020 and fell 0.05% from April 2021. The auto default rate fell to 0.34% from 0.56% compared to the same period in 2020 and fell 0.09% from April 2021.[16]

The OIC's proposed rulemaking is based on the unsupported assumption that the protections adopted to assist consumers in weathering the challenges of the COVID-19 pandemic have "disrupted the credit reporting process," and "caused credit-based insurance scoring models to be unreliable and therefore inaccurate…."[17] The data shows, however, that the improvements

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[12] Notice of Possible Rulemaking.

[13] *Experian 2020 Consumer Credit Review*, https://www.experian.com/blogs/ask-experian/consumer-credit-review/ (last visited, June 22, 2021).

[14] *Id.*

[15] *Id.* These findings were consistent with what the CFPB reported early in the pandemic. In a report issued in August 2020, the CFPB noted that from March 2020 to June 2020, consumers had not experienced significant increases in delinquency or other negatives credit outcomes following the onset of the COVID-19 pandemic, and that credit card balances fell substantially. *See,* Consumer Financial Protection Bureau, *The Early Effects of the COVID-19 Pandemic on Consumer Credit*, CFPB Office of Research Special Issue Brief, 1-4 (Aug. 2020), https://files.consumerfinance.gov/f/documents/cfpb_early-effects-covid-19-consumer-credit_issue-brief.pdf.

[16] Press release, S&P Dow Jones Indices, *S&P/Experian Consumer Credit Default Indices Show Second Straight Drop in Composite Rates in May 2021* (June 15, 2021), https://www.spglobal.com/spdji/en/corporate-news/article/sp-experian-consumer-credit-default-indices-show-second-straight-drop-in-composite-rate-in-may-2021/.

[17] According to the Notice of Possible Rulemaking:

> The Commissioner finds that the current protections to consumer credit history at the state and federal level have disrupted the credit reporting process. This disruption has caused credit-based insurance scoring models to be unreliable and therefore inaccurate when applied to produce a premium amount for an insurance consumer in Washington state. This makes the use of currently filed credit based insurance scoring models unfairly discriminatory within the meaning of RCW 48.19.020.

to consumer credit reflect a mix of legal relief, public assistance, and changes in consumer spending, reflecting the public policy choices to ensure that consumers are not disproportionately impacted by the unique circumstances created by the pandemic. There is no need for OIC's proposed rule.

4. The Commissioner's justification for the rule is built on imprecision, speculation and conjecture.

The Notice of Proposed Rulemaking lacks any evidence to support a series of statements that are imprecise, speculative or conjectural.[18] The Commissioner's Notice of Possible Rulemaking says that the CARES Act results in "all credit bureaus…collecting a credit history that is objectively inaccurate for some consumers and therefore results in an unreliable credit score being assigned to them. Consequently, this untrustworthy credit score degrades any predicative value that may be found in a consumer's credit-based insurance score."

This comment is both inaccurate and astounding. The CARES Act has not resulted in credit bureaus collecting inaccurate credit histories for consumers. Rather, it has allowed consumers flexibility in repaying certain debts by, for example, placing such debts in forbearance or otherwise seeking a realistic payment accommodation arrangement with their creditors, reflecting the emergency situation into which they have been thrust, rather than unduly penalizing them for it. This federally-permitted flexibility is accurately recorded in consumers' credit files, as consumers' payment status continues to be reported as it was prior to the accommodation.[19] In other words, the CARES Act "won't wipe the slate clean of preexisting negatives."[20] Instead, it reflects consumers' credit history and credit score in the most accurate and fair way possible. Thus, the CARES Act functions as it should—consumers receive the benefit of payment flexibility in a time of personal and societal financial crisis, and their credit history continues to accurately

[18] For example, there is no evidence to support the Notice of Proposed Rulemaking for the comment that "when the CARES Act protections are eliminated, and negative credit information can be fully reported again, credit histories for people of color will have been disproportionately eroded by the pandemic." The Commissioner has offered no proof that (a) negative credit information will be reported in the frequency and volume it suggests, or that (b) that negative credit reporting will fall disproportionately on communities of color. For these reasons alone, the rulemaking should be withdrawn. See, *Am. Prop. Casualty Ins. Assn. v. Office of the Wash. Ins. Comm.*, Sup. Ct. Wash. (Thurston Co.) No. 21-2-00542-34, Petitioners' Motion for Summary J. on Their Claim for Declaratory Relief.

[19] Michelle Singletary, *Here's how covid-19 may impact your credit score*, The Washington Post (Aug. 25, 2020), available at https://www.washingtonpost.com/business/2020/08/25/coronavirus-impact-credit-score/.

[20] Bev O'Shea, *How COVID-18 Payment Accommodations May Affect Your Credit*, Nerdwallet (Aug. 18, 2020), available at https://www.nerdwallet.com/article/finance/covid-19-payment-accommodations-may-affect-credit; *see also* Consumer Financial Protection Bureau, *Consumer Reporting FAQs Related to the CARES Act and COVID-19 Pandemic* (June 16, 2020), available at https://files.consumerfinance.gov/f/documents/cfpb_fcra_consumer-reporting-faqs-covid-19_2020-06.pdf.

reflect the consumers' pre-crisis repayment habits. In other words, the CARES Act does not result in inaccurate and unreliable credit histories and scores; rather, it results in credit scores more accurately derived from a consumers' credit history, without punishing them for the uncontrollable impact of the COVID-19 crisis.

The Notice of Proposed Rulemaking makes yet another absurd claim when it says that at the "full" expiration of the CARES Act, "a large volume of negative credit corrections will flood consumer credit histories. This flood of negative credit history has not been accounted for in the current credit scoring models. Without data to demonstrate that the predictive ability of credit scoring models based on pre-pandemic credit and claims histories is unchanged, the predicative ability of current credit scoring models cannot be assumed…" The rulemaking record is devoid of any evidence to support this speculation or any evidence demonstrating the extent and magnitude, if any, of such effect, assuming it exists at all.

5. Conclusion

The Consumer Data Industry Association is grateful for the opportunity to comment on this rulemaking process. We encourage the Commissioner to reverse course because consumer reports (including credit histories and credit-based insurance scores) are highly stable and accurate; the credit reporting dispute system resolves disputes quickly, efficiently, and to consumers' satisfaction; the CARES Act is working as expected and consumers are benefiting; and the Commissioner's justification for the rule is built on imprecision, speculation and conjecture.

Respectfully submitted,

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