

August 6, 2021

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**RE:    Office of the Insurance Commissioner (the “OIC”) Matter R 2021-07 Stakeholder Draft  
released on July 13, 2021**

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.

Thank you for the opportunity to review and comment on the first stakeholder draft, which if adopted, would implement a 3-year ban on the use of credit history for homeowners and private passenger automobile insurance as those terms are defined in the above-referenced draft at Sections 4(a). Although we recognize that the OIC believes there is some urgency in adopting a final rule, this draft was released on July 13, 2021, which is prior to the expiration of the CR-101 comment period. As a result, the OIC prepared the stakeholder draft without having reviewed any stakeholder comments to ensure a fair and transparent rulemaking process under the Administrative Procedures Act.

In addition to APCIA's specific comments and edits to the July 13, 2021 draft set forth herein, we respectfully request that the OIC also consider and address the comments contained in APCIA's July 30, 2021 CR-101 comment letter, which is incorporated herein by reference, during the stakeholder draft process. As previously stated in the July 30 comment letter, APCI believes this rulemaking should be withdrawn and the Emergency Rule allowed to expire.

Based on the text of the CR-101 notice and the July 13, 2021 stakeholder draft, the OIC fails to distinguish between a Credit Score that is used for determining an individual's credit worthiness and a Credit Based Insurance Score (“CBIS”). Unlike a financial Credit Score that uses credit history only, CBIS are specialized for insurance underwriting purposes and are predictive of future insurance losses and related costs using multiple factors of which credit history is only

Mr. David Forte

August 6, 2021

Page 2 of 12

one. By conflating these two types of scores, the OIC fails to recognize that the models used to produce CBIS continue to remain stable during the period of the pandemic. This stability results from the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) protections afforded to consumers with accommodations due to a natural disaster, forbearance, and deferment, including the Covid 19 Pandemic. Reports of forbearance and deferment accommodations due to COVID-19 cannot be used to adversely affect consumers’ current or future CBIS during or after the expiration of the CARES Act. In fact, CBIS models have been calibrated to exclude such accommodations whether occurring pre-, during-, or post- COVID.<sup>1</sup> Furthermore, the stability of CBIS will remain unaffected after the CARES Act expires because, accommodations for forbearance or deferment due to COVID-19 (or any natural disaster) must continue to be excluded.<sup>2</sup>

We will not repeat much of the technical information we know was submitted by interested parties during the CR-101 comment period, but we refer you to the July 30, 2021 CR-101 comment letter submitted by Nancy Watkins, FCAS, MAAA of Milliman, Inc. on behalf of the National Association of Mutual Insurance Companies (NAMIC) as well as the July 30, 2021 CR-101 comment letter from The Consumer Data Industry Association<sup>3</sup>. These two letters provide excellent overviews of the impact of the CARES Act and the COVID 19 Pandemic on Credit Scores used for determining credit worthiness as well as CBIS. The CDIA letter explains in great detail (with citations) why the Commissioner’s understanding of the impact of the COVID 19 pandemic on consumer credit worthiness is demonstrably wrong. In fact, many of the measures of the average consumer’s financial wellbeing have shown improvement such as FICO scores increased by 7 percent and credit card debt reduced by 14 percent. Along with APCIA’s July 30 comments and these August 6 comments, these letters taken together rebut many of the inaccurate and unsubstantiated statements made by the OIC in support of the current rulemaking

In addition, we wish to reinforce some of the key points the OIC must consider when reviewing the various CR-101 comment letters described above to include the following:

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<sup>1</sup> See the first bulleted paragraph at the top of p. 3.

<sup>2</sup> Additional examples of credit data that are not included in a CBIS are “No Hits” and “No Scores”, which are prohibited by the OIC’s current rules.

<sup>3</sup> The Consumer Data Industry Association submitted letters to the OIC on July 21 and July 30, 2021. The July 30, 2021 letter provides an excellent and factual overview of the impact of the COVID 19 Pandemic and the CARES Act on consumer credit.

- The CARES Act sets forth a variety of requirements to provide economic and relief during the Pandemic. Of particular importance to this rulemaking is that it required credit vendors to treat the Pandemic like a natural disaster and use the natural disaster accommodation codes already built into CBIS such that disaster accommodations related and un-related to COVID 19 (prior to and during the CARES Act) have not been considered in calculating CBIS.
- Using the same disaster codes (pre-, during- and post CARES Act), means there is no different treatment between consumers experiencing a negative event before, during, or even after COVID 19, negating the OIC's unfair discrimination rationale in support of the proposed rule. Disaster code reports are excluded as "anomalous data" in CBIS contributing to their stability, accuracy, and reliability.
- Disaster-related credit history (including the Pandemic history) does not adversely impact CBIS because it **is not** included in the CBIS. As a result, the following OIC statement in the CR-101 notice is inaccurate: "Remaining consumer credit protections in the CARES Act will expire after the national state of emergency. When the CARES Act fully expires, 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 . . . ."
- CARES Act protections continue after the accommodation ends, so there will be no data correction to be made in CBIS models. Previously excluded disaster code data will not be reported or included in CBIS when the Pandemic ends.

Based on the foregoing comments, APCIA asserts there is no basis for banning credit history as a component of CBIS. Accommodations due to COVID-19 do not now nor will they after the Pandemic ends adversely impact consumers' credit history. As a result, there is no need for rulemaking other than as it relates to Section II below.

If, however, the OIC persists in pursuing rulemaking as proposed in the CR-101, the text in Sections I, II, and III below addresses related modifications, additions, and deletions. Section I addresses suggested revisions in the July 13, 2021 stakeholder draft, to add and delete certain sections and to clarify that CBIS **may be** used but only credit history directly tied to the CARES Act accommodations is prohibited. Sections II and III include suggestions APCIA made in the July 30, 2021 CR-101 comment letter.

***Section I - Modifications in or related to July 13, 2021, Stakeholder draft incorporating ACPIA's comments from its CR-101 comment letter dated July 30, 2021:***

**WAC 284-24A-005**

**Definitions that apply to this chapter.**

The definitions in this section apply throughout this chapter:

- (1) "Credit Based Insurance Score" or "Insurance Score" means a number or rating that is derived from an algorithm, computer application, model, or other process that is based in part on credit information permitted to be used by law for the purposes of predicting the future insurance loss exposure of an individual applicant. Such scores are specialized for insurance underwriting rating purposes and are predictive of future insurance losses and are not used to determine an applicant's credit worthiness for financial transactions.
- (2) "Demographic factors" means the factors listed below if they are used in an insurer's rates, rating tiers, rating factors, rating rules or risk classification plan:
  - (a) Age of the insured;
  - (b) Sex of the insured;
  - (c) The rating territory assigned to the property location for residential property insurance and to the vehicle's garage location for personal auto insurance.
- (3) "Premium" means the same as RCW [48.18.170](#).
- (4) "Rate" means the cost of insurance per exposure unit.
- (5) "Rating factor" means a number used to calculate premium.
- (6) "Risk classification plan" means a plan to formulate different premiums for the same coverage based on group characteristics.
- (7) "SERFF" means the System for Electronic Rate and Form Filing. SERFF is a proprietary National Association of Insurance Commissioners (NAIC) computer-based application that allows insurers and other entities to create and submit rate, rule and form filings electronically to the commissioner.
- (8) "Significant factor" means an important element of a consumer's credit history or insurance score. Examples of significant factors include:
  - (a) Bankruptcies, judgments, and liens;
  - (b) Delinquent accounts;
  - (c) Accounts in collection;
  - (d) Payment history;
  - (e) Outstanding debt;
  - (f) Length of credit history; and
  - (g) Number of credit accounts.

“Significant Factor” does not include the negative impact of forbearance, deferment, or other accommodation on consumers’ credit history (referred to herein as “Prohibited Data Elements”) pursuant to the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) or, if such Prohibited Data Elements are included, they must be given a neutral score.

(9) "Substantive underwriting factor" means a factor that is very important to an underwriting decision. Examples of substantive underwriting factors include:

- (a) History of filing claims;
- (b) History of moving violations or accidents;
- (c) History of driving uninsured;
- (d) Type of performance for which a vehicle is designed; and
- (e) Maintenance of a structure to be insured.

(10) "Vehicle" means any motorized vehicle that can be insured under a private passenger

#### **WAC 284-24A-015**

##### **When must an insurer file the insurance scoring model to comply with the law?**

- (1) Every insurer that uses an insurance scoring model to underwrite personal insurance coverage must file the model with the commissioner before January 1, 2003.
- (2) Every insurer that uses an insurance scoring model to determine personal insurance rates or premiums must file the model with the commissioner before June 30, 2003. Related rates, risk classification plans, rating factors and rating plans must be filed and approved by June 30, 2003. Such model may not use Prohibited Data Elements described in WAC 284-24A-005(8) .
- (3) Every insurer that uses an insurance scoring model for homeowners, dwelling property or private passenger automobile rating or underwriting prior to June 20, 2021 shall either:
  - (a) File a certification signed by an officer of the company stating that the previously approved credit-based insurance scoring model does not incorporate one or more Prohibited Data Elements described in WAC 284-24A-005(8) or
  - (b) Refile the insurance scoring model removing the data elements based on credit information otherwise deferred or accommodated under the CARES Act. If the insurer’s previously filed and approved model uses one or more such Prohibited Data Elements, the insurer must refile the insurance scoring model after removing them or giving them a neutral score.

#### **WAC 284-24A-025**

##### **Filings by insurance scoring model vendors.**

- (1) The commissioner will allow vendors to file insurance scoring models. The vendor must file the scoring model in SERFF in accordance with the *Washington State SERFF Personal*

*Insurance Scoring Model Filing General Instructions* posted on the commissioner's web site ([www.insurance.wa.gov](http://www.insurance.wa.gov)).

- (2) Insurers may use models filed by vendors after the commissioner determines the model complies with Washington state laws and regulations, including those banning the use of the Prohibited Data Elements described in WAC 254-24A-005(8).
- (3) An insurer may use a model that has been filed by a vendor and accepted by the commissioner if the insurer submits a filing in SERFF that:
  - (a) References the vendor that filed the model;
  - (b) References the filing number and model name used by the vendor;
  - (c) States whether the insurance scoring model will be used for underwriting, rating, or both; and
  - (d) Proposes an effective date for the insurer's use of the model.
- (4) Models in use prior to June 20, 2021, may continue to be used without refiling if the vendor submits a certification signed by an officer of the vendor's company stating that the scoring model does not use the Prohibited Data Elements described in WAC 284-24A-005(8) or if used, they have been assigned a neutral score.

#### **WAC 284-24A-050**

##### **What types of information must an insurer include in a multivariate analysis?**

- (1) A multivariate statistical analysis must evaluate the rating factors listed below (if applicable to the rating plan, and to the extent that data are credible):
  - (a) For homeowners, dwelling property, earthquake, and personal inland marine insurance:
    - (i) Insurance score produced by a Credit Based Insurance Scoring model;
    - (ii) Territory and/or geographic area;
    - (iii) Protection class;
    - (iv) Amount of insurance;
    - (v) Surcharges or discounts based on loss history;
    - (vi) Number of family units; and
    - (vii) Policy form relativity.
  - (b) For private passenger automobile, personal liability and theft, and mechanical breakdown insurance:
    - (i) Insurance score produced by a Credit Based Insurance Scoring model;
    - (ii) Driver class;
    - (iii) Multicar discount;
    - (iv) Territory and/or geographic area;
    - (v) Vehicle use;
    - (vi) Rating factors related to driving record; and

- (vii) Surcharges or discounts based on loss history.
- (2) An insurer must provide a general description of the model used to perform the multivariate analysis, including the:
  - (a) Formulas the model uses;
  - (b) Rating factors that are included in the modeling process;
  - (c) Output from the model, such as indicated rates or rating factors.
- (3) An insurer must show how the proposed rates or rating factors are related to the multivariate analysis.
- ~~(4) The temporary prohibition in WAC 284-24A-090 on the use of credit history to determine personal insurance rates, premiums, or eligibility for coverage for all homeowners and private passenger automobile coverage will remain in effect for three years following the day the national emergency concerning the novel coronavirus disease (COVID-19) outbreak declared by the President on March 13, 2020 under the National Emergencies Act (50 U.S.C. 1601 et seq.) terminates, or the day the Governor's Proclamation 20-05, proclaiming a State of Emergency throughout the state of Washington as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States expires, whichever is later.~~
  - ~~(a) The definitions in this subsection apply through this section unless the context clearly requires otherwise.~~
    - ~~(i) Homeowners coverage includes dwelling property, mobile homeowners, manufactured homeowners, renter, and condominium owner's coverage.~~
    - ~~(ii) Private Passenger Automobile coverage includes motorcycles and recreational vehicle coverage~~
  - ~~(b) The temporary prohibition on the use of credit history to determine personal insurance rates, premiums, or eligibility for coverage for all homeowners and private passenger automobile coverage does not apply to commercial lines, personal liability and theft, earthquake, personal inland marine, or mechanical breakdown coverage.~~

**NEW SECTION WAC 284-24A-090 Temporary ban regarding the use of Prohibited Data**

**Elements described in WAC 284-24A-005(8).** *(Special note for the following section: The OIC provides inaccurate and misleading information that is not based on actual data as part of the draft's New Section 284-24A-090 (2). This information should not be incorporated into the rule.)*

- (1) Notwithstanding any other provision of this chapter, this section applies to all homeowners and private passenger automobile insurance pertaining to and issued in the state of Washington while this rule is effective.
- (2) The insurance commissioner finds that as a result of the economic and legal relief provided to consumers under state and federal programs during the course of the COVID 19 pandemic, certain data elements that represent forbearance, deferment or other

accommodation due to 2019 Covid Pandemic (“Prohibited Data Elements” described in WAC 284-24A-005) should not be used in a credit based insurance scoring model at any time during or after the COVID 19 Pandemic. ~~broad negative economic impact of the coronavirus pandemic, the disproportionately negative economic impact the coronavirus pandemic has had on communities of color, and the disruption to credit reporting caused by both the state and federal consumer protections designed to alleviate the economic impacts of the pandemic, for homeowner’s coverage and private passenger automobile coverage issued in the state of Washington,~~

The use of such factors in a credit based insurance scoring model may result in premiums that are excessive, inadequate, or unfairly discriminatory within the meaning of RCW 48.19.020 and RCW 48.18.480.

(3) For all homeowner’s coverage and private passenger automobile coverage issued in the state of Washington, insurers must not use a credit-based insurance scoring model that incorporates Prohibited Data Elements (described in WAC 284-24A-005) to determine personal insurance rates, premiums, or eligibility for coverage.

(4) For purposes of this section, insurers may not:

(a) Use credit history reported as subject to an accommodation due to the CARES Act to place insurance coverage with a particular affiliated insurer or insurer within an overall group of affiliated insurance companies.

~~(b) Use credit history to determine a consumer’s eligibility for any payment plan.~~

Note : APCI suggests deleting 4(b) because by removing the use of credit from payment options, customers who have a history of making payments on time will have to pay more and, thereby, subsidize customers who do not make payments. This is unfairly discriminatory as it relates to responsible customers.

~~(5) In order to comply with this section, insurers subject to this rule may substitute any insurance credit score factor used in a rate filing with a neutral rating factor.~~

~~(b) For purposes of this section, insurers may, but are not required to, implement the neutral factor by peril or coverage.~~

~~(6)~~ 5) Insurers may not include rate stability rules in filings submitted to mitigate changes to the credit-based insurance score that result in either a significant increase or decrease in an insured’s premium based solely on the change to the insurance score with this section.

~~(7)~~ 6) The prohibitions in this rule must apply to all new policies effective and existing policies processed for renewal on or after XXXX (Note - Sufficient lead time must be granted to initiate this change.)

~~(8) The temporary prohibitions on the use of credit history in this section will remain in effect for three years following the day the national emergency concerning the novel coronavirus disease (COVID-19) outbreak declared by the President on March 13, 2020 under the National Emergencies Act (50 U.S.C. 1601 et seq.) terminates, or the day the Governor’s Proclamation~~



~~20-05, proclaiming a State of Emergency throughout the state of Washington as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States expires, whichever is later.~~  
(9 7) The definitions in this subsection apply through this section unless the context clearly requires otherwise.

(a) Homeowners coverage includes dwelling property, mobile homeowners, manufactured homeowners, renter, and condominium owner's coverage.

(b) Private Passenger Automobile coverage includes motorcycles and recreational vehicle coverage

(c) "Neutral factor" means a single constant factor calculated such that, when it is applied in lieu of insurance-score-based rating factors to all policies in an insurer's book of business, the total premium for the book of business is unchanged.

***Section II Suggested Alternative to the Ban of the use of CBIS that protects consumers – Extraordinary Life Circumstances (ELC):***

Virtually every state that allows the use of CBIS also requires consideration of extraordinary life circumstances (ELC) to mitigate or neutralize the effects of external events on credit history, such as job loss, divorce, medical diagnosis, and other challenging life events. These states adopt ELC through either statute, rule, bulletin, or practice. The only state that prohibits consideration of ELC is the State of Washington. Earlier this year, HB 1351 was introduced, which (if adopted) would require insurers to provide reasonable relief from insurance rates and rules for consumers whose credit history was negatively impacted by extraordinary life events. Commissioner Kreidler actively opposed the Bill, which did not proceed.

The following proposed rule language would allow requests for and the granting of relief due to an ELC while maintaining regulatory control over the application of such rating rules as set forth in Section 3(b) of the proposed language shown below. Unlike the Emergency Rule banning the use of credit history, APCIA believes the Commissioner has the authority to adopt this rule under RCW 48.19.035(5).

**NEW SECTION WAC 284-24A-XXX Extraordinary Life Circumstances**

(1) Notwithstanding any requirement of Title 48 RCW and Title 284 WAC, an insurer that uses a Credit Based Insurance Score shall, on written request from an applicant for insurance coverage or an insured, provide reasonable exceptions to the insurer's rates, rating classifications, company or tier placement, or underwriting rules or guidelines for a consumer who has experienced and whose credit information has been directly influenced by any of the following events:

- (a) Catastrophic event, as declared by the federal or state government.
  - (b) Serious illness or injury, or serious illness or injury to an immediate family member.
  - (c) Death of a spouse, child, or parent.
  - (d) Divorce or involuntary interruption of legally-owed alimony or support payments;
  - (e) Identity theft.
  - (f) Temporary loss of employment for a period of 3 months or more, if it results from involuntary termination.
  - (g) Military deployment overseas.
  - (h) Other events, as determined by the insurer.
- (2) If an applicant or insured submits a request for an exception as set forth in Section 1 an insurer may:
- (a) Require the consumer to provide reasonable written and independently verifiable documentation of the event.
  - (b) Require the consumer to demonstrate that the event had direct and meaningful impact on the consumer's credit information.
  - (c) Require such request be made no more than 60 days from the date of the application for insurance or the policy renewal.
  - (d) Grant an exception despite the consumer not providing the initial request for an exception in writing.
  - (e) Grant an exception where the consumer asks for consideration of repeated events or the insurer has considered this event previously.
- (3) The insurer shall file rating rules for approval that sets forth the criteria the insurer will use to grant an exception due to extraordinary life circumstances and will demonstrate that the granting of such an exception is uniformly applied to all similarly situated applicants or insureds.
- (4) An insurer is not out of compliance with its previously approved rate filing as a result of granting an exception under this section, if the insurer has filed and received approval of a rating rule as set forth in this section.

***Section III - Expedited Rate filings Based July 30, 2021 APCI Comments made necessary if the OIC proceeds with its rulemaking to ban the use of Credit History.***

If the OIC continues with this rulemaking to ban the use of credit history for rating and underwriting purposes, then insurers must be allowed to make updated base rate filings that meet the rate standard of RW 48.19.020, and the new rate filings must be implemented as soon as reasonably possible.

As previously stated in APCIA's July 30 CR-101 Comment letter, when the OIC adopted the Emergency Rule without allowing a complete base rate repricing by insurers in compliance with RCW 48.19.020 and WAC 284-24-065, that action necessarily resulted in rates that are excessive, inadequate, or unfairly discriminatory. When the OIC 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.

In order to expedite the filing and approval of base rate filings that meet the rate standards of RCW 48.19.020 and WAC 284-24-065 while allowing insurers to adjust for the impact of the OIC's emergency and potentially permanent rule, the OIC must adjust the filing and approval required for these filings. The Commissioner is granted such authority by RCW 48.19.080.<sup>4</sup> This adjustment is necessary as the OIC lacks the staff and resources to otherwise review and approve the revised base rate filings on a timely basis as demonstrated by historic review patterns for base rate filings. Companies and consumers should not be penalized by the inability of the OIC to review and approve these filings within the 30-day requirement for normal and routine filings.

**NEW SECTION – Expedited Filing review and Certification of Personal lines Auto and Homeowners Rate Filings**

- (1) All insurers of personal lines auto and homeowners coverage that used an approved credit-based insurance scoring model prior to June 20, 2021 may file revised rates that remove the use of the insurance score based on a credit-based insurance model and adjusts all remaining rating factors.
- (2) Such filings shall be effective upon filing if accompanied by a certification signed by an officer of the company stating that rate filing removes the use of a credit-based insurance score and adjusts the remaining rate factors to comply with the rates standard set forth in RCW 48.19.020.
- (3) Revised rate filings submitted under this section shall be deemed approved upon filing.

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<sup>4</sup> "Under such rules and regulations as he or she shall adopt the commissioner may, by order, suspend or modify the requirement of filing as to any kind of insurance. Such orders, rules and regulations shall be made known to insurers and rating organizations affected thereby. The commissioner may make such examination as he or she may deem advisable to ascertain whether any rates affected by such order meet the standard prescribed in RCW [48.19.020](#)."

(4) The Commissioner may subsequently withdraw approval of rate filings submitted under this section under the authority set forth in RCW 48.19.120<sup>5</sup>. For purposes of this section and RCW 48.19.120 the waiting period for use of the base rate filing to remove the use of the credit-based insurance score is waived.

We thank you for the opportunity to submit these comments.

Sincerely,



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Mark Sektan Vice President,  
State Government Relations  
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<sup>5</sup> “(1) If at any time subsequent to the applicable review period provided in RCW [48.19.060](#) or [48.19.110](#), the commissioner finds that a filing does not meet the requirements of this chapter, he or she shall, after a hearing, notice of which was given to every insurer and rating organization which made such filing, issue his or her order specifying in what respect he or she finds that such filing fails to meet the requirements of this chapter, and stating when, within a reasonable period thereafter, the filings shall be deemed no longer effective.

“(2) Such order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

“(3) Any person aggrieved with respect to any filing then in effect, other than the insurer or rating organization which made the filing, may make written application to the commissioner for a hearing thereon. The application shall specify the grounds to be relied upon by the applicant. If the commissioner finds that the application is made in good faith, that the applicant would be so aggrieved if his or her grounds are established, and that such grounds otherwise justify holding the hearing, he or she shall, within thirty days after receipt of the application, hold a hearing as required in subsection (1) of this section.” RCW 48.19.120(1)-(3).