



PREPROPOSAL STATEMENT OF INQUIRY

CR-101 (October 2017)
(Implements RCW 34.05.310)

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WSR 21-13-131

Agency: Office of the Insurance Commissioner

Subject of possible rule making: Temporary prohibition on use of credit history on some personal lines

Insurance Commissioner Matter R 2021-07

Statutes authorizing the agency to adopt rules on this subject: RCW 48.02.060, 48.18.480, 48.19.020, 48.19.035, 48.19.080

Reasons why rules on this subject may be needed and what they might accomplish: The Commissioner is tasked with ensuring that insurance rates are not excessive, inadequate, or unfairly discriminatory, and with enacting rules that ensure the use of credit history and credit history factors in setting insurance premiums is not excessive, inadequate, or unfairly discriminatory.

Insurance companies which use credit-based insurance scoring claim that credit scoring is a predictive tool to identify risk of loss from a specific consumer. This credit-based insurance score is then used to determine premiums charged to each consumer.

On February 29, 2020, the Governor of the State of Washington issued 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. On March 13, 2020 under the National Emergencies Act (50 U.S.C. 1601 et seq.) the President of the United States declared a national emergency concerning the novel coronavirus disease (COVID-19) outbreak in the United States. Addressing the state of emergency caused by the coronavirus pandemic has required difficult steps that have had a severe financial impact on large groups within our state.

In part to mitigate the financial impacts of the COVID 19 pandemic to individual households, on March 27, 2020, the President of the United States signed the CARES Act (P.L. 116-136). Section 4021 of the CARES Act addresses credit reporting during the pandemic. The CARES Act requires financial institutions to report consumers as current if they were not previously delinquent or, for consumers that were previously delinquent, not to advance the level of delinquency, for credit obligations for which the furnisher makes payment accommodations to consumers affected by COVID-19 and the consumer makes any payments the accommodation requires. Section 4022 of the CARES Act requires certain lenders to offer forbearance options to borrowers, and imposed a moratorium on foreclosures for certain home loans. In addition, section 3513 of the CARES Act specifically addresses the furnishing of federally-held student loans for which payments are suspended. This provision results in all non-defaulted federally-held student loans being reported as current.

In addition, the Governor of the State of Washington has issued several emergency proclamations limiting state agencies from charging late fees and penalties, and placing a moratorium on garnishment actions (Emergency Proclamation 20-49, and subsequent amendments) and evictions (Emergency Proclamation 20-19, and subsequent amendments). The critical consumer protections included in these proclamations have also had the effect of preventing creditors from taking actions that are otherwise reportable on a consumer's credit history.

The result of the CARES Act is that all credit bureaus are 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 predictive value that may be found in a consumer's credit-based insurance score.

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.

There is evidence that the negative economic impacts of the pandemic have disproportionately fallen on people of color. Therefore, 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.

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. Without data to demonstrate that the predictive ability of credit scoring models based on pre-pandemic credit and claims histories is unchanged, the predictive ability of current credit scoring models cannot be assumed. This will make the use of currently filed credit based insurance scoring models unfairly discriminatory within the meaning of RCW 48.19.020.

It is impossible to know precisely when the state and federal states of emergency will end. Insurance companies must have an alternative to the currently unreliable credit scoring models they have in place before the protections of the CARES Act end. Therefore, it is necessary to immediately implement changes to the use of credit scoring.

The Commissioner is considering this rulemaking to support the effects of the emergency rule, on the same subject and as filed in WSR 21-07-103, will last for three years after the public health emergency concludes.

Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies: None

Process for developing new rule (check all that apply):

- ☐ Negotiated rule making
- ☐ Pilot rule making
- ☐ Agency study
- ☒ Other (describe) Submit written comments by July 31, 2021

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting:

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Additional comments:

Date: June 22, 2021

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