

February 7, 2025

To: Commissioners Fowler, Humphreys, French, Ommen, Lawrence, Conway, Godfread, Dwyer, White, Pike, and Mais.

CC: Jennifer Cook

Re: Draft Survey of Life Insurer Underwriting Guidelines as Applied to Justice Impacted Individuals.

Dear Commissioners:

We are writing on behalf of the undersigned NAIC Consumer Representatives for two purposes. First, we respond to ACLI's November 26, 2024 letter to Commissioners Fowler and Humphreys that mischaracterizes the Survey's purpose and virtually all of the information the draft Survey requests. Second, we urge A Committee to complete the drafting process, submit the survey for approval, and send the approved survey to life insurers.

The ACLI Letter

The ACLI characterizes the survey as primarily if not exclusively focused on correlations that exist between prior convictions and mortality and morbidity. The letter cites studies they believe confirms these correlations,¹ and concludes by assuring regulators (twice) that since this evidence is readily available, it "precludes the need to provide proprietary materials" and that "we do not believe further questioning is necessary."² This characterization of the working group's intent and the survey's purpose is wrong.

There are eleven questions in the survey; only one question (question 3) requests information and studies that demonstrate the correlation between morbidity and "criminal history, activity, or convictions." Incarceration or imprisonment is not mentioned in this question or anywhere else in the survey. The remaining 10 questions ask how criminal

¹ The relevance and utility of using the cited studies to evaluate the effects of criminal history on morbidity is also a question. See February 5, 2025 memo to Commissioners Humphreys and Fowler from Shannon Ross, CEO of The Community; Consultant at Marquette University and Jo-Ann Wallace, President/CEO, NLADA Mutual Insurance Corporation.

² It is not unusual for an advocacy group to recharacterize or reframe issues to make them safe and innocuous and now harmless to their interests, and then answer the now benign question and assure regulators and the public that no further inquiry is needed. What is unusual in the ACLI's letter is the extent of recharacterization and distortion of the survey's purposes, as these have been expressed in public meetings, the drafting process, and the survey questions drafted in the first and second drafts.

history is used, differentiations between the use of misdemeanor and felony arrests, and how arrests without evidence of a conviction are considered.

The NAIC has held multiple public sessions on the use of criminal history data and additional sessions once drafting commenced, including discussion at the 2024 fall national meetings. A general review of the minutes of these sessions do not record discussion and debate concerning the correlation between past convictions and morbidity, nor references that this was the survey's purpose. Several of us participated in these public meetings and do not recall this was ever a topic of discussion and debate. Significantly, ACLI's September 5, 2024 letter to SCORI commenting on the first draft survey provides numerous suggestions and clarifications on the survey questions (some adopted) and does not suggest that "the driver" for the survey is to understand the effects of prior incarceration to morbidity.³ The ACLI concludes, "It is important to note that mortality and morbidity are not the only risk factors considered when evaluating criminal history in underwriting."

Our intent is not to provide you with the catalog of errors we perceive in ACLI's letter. Instead, we are concerned that ACLI's letter and similar arguments not only distort your reasons for the survey but could derail the process entirely.

The Survey's Importance

To the best of our knowledge, this survey is the first attempt by state insurance regulators to collectively gather information about how criminal history data is obtained, analyzed and modeled, and how life insurers use this information to underwrite their products. Our criminal justice system has long been a subject of study, critique, vehement advocacy, and sometimes violence. The revolutions in Big Data, AI and predictive analytics raise new issues, opportunities, and concerns, which may be especially sensitive for criminal history data. How criminal history data is used is especially relevant to tens of millions of Americans, as approximately 1/3 of all adults in the country have a criminal record. An arrest is part of an individual's criminal history, and may not include the disposition of the case, such as whether the arrest was followed by a conviction, dismissal of charges, or other outcomes. The accuracy of this information is often questioned, particularly utilizing arrest records not tied to a subsequent conviction.

State insurance regulators have not had access to much of this data use, which is important information for regulators to fulfill their statutory mission of fair and efficient insurance markets, actuarially sound risk classifications, and that classifications and rates

³ The second and current draft survey essentially asks the same eleven questions from the first survey, though some of the information requests are trimmed down and clarifications made.

are not “unfairly discriminatory,” however defined. Insurers and other financial services organizations often contract with third party vendors who aggregate and model this data. State insurance regulators have indeterminate authority over these vendors which creates additional uncertainty of how this information is used, including compliance with the federal Fair Credit Reporting Act limitations on using criminal history. Also unclear is whether and how data aggregators and modelers have access to and utilize arrests that result in dismissal of charges, convictions later sealed, or when the individual is deemed rehabilitated under a state’s law. Survey question eleven asks some of these questions.

This survey is voluntary and simply a request for information not currently available; the survey does not suggest or imply whether any additional regulatory action is needed. The SCORI life insurance work stream has done a commendable job developing this survey, providing public forums for comment, and obtaining information from multiple stakeholders, including those not focused on insurance. We ask A Committee to complete this work so state insurance regulators and the public (for non-proprietary information) are informed. Thank you for considering our comments and we are ready to answer questions or provide further comments.

Sincerely,

Chuck Bell
Brendan Bridgeland
Bonnie Burns
Jalisa Clark
Brenda Cude
Michael DeLong
Erica Eversman
Kenneth Klein
Peter Kochenburger
Harry Ting
Wayne Turner
Richard Weber
Silvia Yee.