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Thank you for the opportunity to comment on SCORI's July 17, 2024, draft survey to life insurers on their use criminal justice records in underwriting. This is particularly important work for several reasons. First, this is largely an unknown area to insurance regulators, legislators, and other stakeholders, or at least is currently, as Big Data and AI have given us a different landscape for insurance operations, including the ability to obtain and utilize vast amounts of data previously unavailable. Second, the use of criminal history data in insurance needs particular attention as it lies on several national fault lines – our very high rate of criminalization and incarceration in the United States, the criminal justice system's disproportionate effects on people of color, and the lack of transparency to insurance consumers on whether and how their criminal history records are being used.

However, there is a major gap in this survey, which is obtaining the same information requested from a life insurer's data modelers/vendors; only question 11 references these vendors. Yet the Big Data and AI WG November 30, 2023 survey report states that 54% of the models life insurers utilized were developed by third-parties (report, pp. 3, 5), and significantly on page 5, "A very high proportion (94%) of the insurers responded that contracts with third parties do not include any conditions that would limit disclosure or otherwise limit transparency to regulators." (emphasis added). It appears then, there is both a need and the ability for regulators to obtain from insurers the same information requested on this survey for third-party vendors/modelers. If an insurer does not have access to this information that they subsequently utilize in underwriting, it can state they cannot obtain the information and why (e.g., contractual intellectual property and trade secret restrictions between the vendor and the life insurer).

With that caveat, this is a well thought out survey and below are my in-line suggestions and comments.

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**7-17-24 DRAFT Life Insurance Workstream  
Life Insurer Survey Draft Questions**

**SURVEY OF LIFE INSURER UNDERWRITING GUIDELINES AS APPLIED TO JUSTICE IMPACTED  
INDIVIDUALS**

The purpose of this survey is to better understand how life insurers consider an applicant's involvement with the criminal justice system during the underwriting process. We are interested in

information about products currently being sold in your state.

### DOCUMENTATION REQUESTED

1. Please provide your company's application questions that either ask directly about the applicant's criminal history or request consent to obtain it. If the questions differ by product, please indicate to which products they apply.
2. Please provide your company's life insurance underwriting guidelines related to criminal history, activity, or convictions. Specifically, identify guidelines that limit product offerings, face amounts maximums, ratings, terms, etc. Please differentiate your underwriting guidelines by policy type (term, whole life, universal life)
3. Please provide the mortality/morbidity data/studies supporting your underwriting guidelines related to criminal history, activity, or convictions.

### UNDERWRITING PROCESS QUESTIONS

4. Does your company consider ordinance violations, misdemeanor or gross misdemeanor criminal convictions in the underwriting process?
  - a. Is this asked on the application?
  - b. If yes, what convictions could result in a rate class other than the most-preferred tier?

Some modelers have stated they also include ordinance violations when collecting criminal history data. This raises several concerns, including (1) ordinances may not include any criminal penalties and should not be considered part of an applicant's criminal history, (2) ordinance violations proceedings may provide minimal due process protections that are present in criminal proceedings, (3) municipal records are more likely to contain inaccurate or irrelevant information.

5. Does your company consider felony criminal convictions in the underwriting process?
  - a. Is this asked on an application?
  - b. What convictions result in a rate class other than the most-preferred tier?
  - c. How many applications for individuals with a felony criminal conviction did your company receive in 2023?
    - i. How many applications were approved?
      1. Of those approved, how many were rated due to the criminal conviction?
    - ii. How many of those applications were denied or postponed based on the criminal conviction alone?
6. For your company's life insurance underwriting guidelines, is criminal history or drug use treated differently if the applicant admitted to the criminal history or drug use verses if the information was found through underwriting discovery?
  - a. If yes, explain when and how the consumer is advised that criminal

history or drug use was found and used to rate or decline the applicant.

7. How does your company consider an individual on parole for purposes of the underwriting process?
8. How does your company consider an individual with a criminal arrest history or other criminal charges when such history is not associated with a subsequent conviction?

I think this proposed language is clearer and encompasses both past arrests and “charges pending...” when there are no records of subsequent conviction. This is also a crucial survey question, as at the time of arrest there are fewer due process protections and initial oversight or review, with the greatest potential for differential and improper treatment, such as racial bias. Initial arrest history without a subsequent conviction, or when the charges are dropped, may be more likely to contain inaccurate information.

9. Does your company have processes in place to ensure you are not asking about/considering expunged/sealed convictions?
10. Do your company’s life insurance underwriting guidelines for criminal history vary based upon whether the applicant was born in a country other than the United States?
11. As part of the underwriting process, does your company use third-party vendors to collect information on an applicant’s criminal history, criminal conviction, criminal or suspected criminal activity?
  - a. If yes, please list the third-party vendor, describe the information collected and what your company is doing to ensure that the third-party vendor’s data is accurate and up to date, and whether the third-party vendor’s modeling also evaluates the impact their models may have on communities of color.

The suggested addition would only collect information on what a third-party vendor’s practices are (if any) without suggesting that such data collection or modeling is required. Since 2020 these issues have been continually debated at the NAIC, and obtaining information on what life insurers and their third-party data vendors are actually doing in this area would better inform SCORI, other regulators, the NAIC, and interested parties.