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Comments for the Center for Economic Justice

To the NAIC Market Conduct Annual Statement Blanks Working Group

Response to Trades' Comments on Recently-Adopted and Proposed MCAS Changes

August 24, 2020

CEJ writes to respond to industry comments – the 8/19/21 NAMIC/APCIA letter regarding the new data element "Closed Claim Without Payment Below the Deductible" and the ACLI 8/21/20 letter regarding additional reporting of accelerated underwriting and TPAs/MGAs.

CEJ disagrees with the industry positions. As explained below, the industry arguments are without empirical support or rely on demonstrably incorrect assertions. We urge the working group to reject the trades' requests and arguments.

NAMIC/APCIA on "Claim Closed Without Payment Below the Deductible"

These P/C trades write to object to the recently-adopted data for the auto and homeowners MCASs – "Closed Claim Without Payment Below the Deductible." The trades make two arguments:

- "After conferring with our members, this information may not necessarily be uniformly captured, if captured at."

Putting aside that the "lack of uniformity" argument could be made for the vast majority of MCAS data elements because insurers employ a wide variety of data systems and business models, the trades have provided no evidence in support of this claim other than a vague reference to "conferring" with members. The trades have provided no information regarding the alleged lack of uniformity or lack of data collection. Consequently, this claim should be given no weight.

Further, the purpose of the MCAS timeline – changes must be adopted by August 1 in the year prior to the collection of the relevant experience – is designed specifically to permit the insurers to modify systems in the event an insurer is not collecting, or not collecting in the relevant format, the specified data element. The fact that some insurers may need to modify systems or data collection is the reason that MCAS deadlines envision prospective reporting with significant lead time. Consequently, the request for a year delay in reporting should be rejected.

- "There may be many reasons an insured does not pursue a claim, and only one of those is because the claimed loss is below the deductible."

The trades' argument against the new data element unintentionally makes the case for the new data element. The trades' write that there are many reasons for a consumer to walk away from a claim. Correct. But that is one of at least two reasons why the new data element is relevant and necessary. First, the data element allows regulators to see how frequently claims are filed for amounts below the deductible – which can be an indication of consumer misunderstanding of their policy terms or claim settlement offers well below the consumer's expectation – both of which are of interest to regulators. Second, the new data element allows better analysis of the remaining claims closed without payment by permitting the segregation of those claims closed without payment due to below-the-deductible from other types of claims closed without payment.

As is very frequently the case with MCAS data elements, the data element is both useful on its own and makes other data elements more useful. The new data element is an example of such a data element. CEJ supports the inclusion of the new data element and urges the working group to reject the trades' entreaties.

<u>ACLI on AUW and TPAs/MGAs</u>

ACLI argues against the proposed interrogatories and separate reporting of certain data elements for accelerated underwriting (AUW). ACLI offers little in the way of rationale and the little offered is either incoherent, misleading or without empirical support.

After extolling the virtues of AUW, ACLI argues that market analysts shouldn't be concerned. ACLI argues that there is "no settled definition" and the CEJ proposed definition "does not help clarify the issue." Here is the CEJ proposal:

> Definition: Accelerated underwriting means underwriting or pricing or life insurance in whole or in part on non-medical data obtained from other than the applicant or policyholder and includes, among other things, facial analytics, social media and consumer credit information.

ACLI fails to explain why the CEJ proposed definition is problematic or point to any specific problematic wording in the definition. Instead, ACLI introduces a new term – "traditional" – and then lists a variety of medical and non-medical data sources used by life insurers. Given that the proposed definition specifically excludes medical data, the ACLI argument is both irrelevant and erroneous.

ACLI then notes that one the new interrogatories and data elements would "require life insurers to list every source of information used in the underwriting process" and "this amount and type of information would likely be unproductive to regulators in monitoring the market conduct of insurers." The proposed interrogatories are:

- Does the company use accelerated underwriting for life insurance? Y/N
- If the company uses accelerated underwriting for life insurance, for what product categories is it used?
- If the company uses accelerated underwriting for life insurance, list the data sources used and vendors supplying data or algorithms.

It is simply bizarre for ACLI to argue that, in the face of a widespread and radically new underwriting technology used by life insurers that it would be "unproductive" for regulators to know what types of data are used for underwriting of what products. .It is obvious that such information would better permit regulator to better understand AUW and better monitor life insurance markets.

ACLI next argues that AUW is not "an appropriate topic for MCAS." ACLI misstates the purpose of MCAS and refers to an absence of complaint ratios for analysis. Collecting data on a radical new approach to life underwriting is clearly relevant for both MCAS and market analysis. Any data element or ratio of interest for life insurance is also relevant for examining differences in consumer outcomes for AUW versus traditional underwriting. In fact, analysis of AUW is even more important because of the automated nature of the technology and the ability to impact tens of thousands of consumers much more quickly than changes in traditional underwriting.

ACLI next argues that MCAS reporting of AUW info raises trade secret concerns. This argument is also without merit since individual insurer MCAS data reports are already confidential. ACLI simply claims that a list of non-medical data sources used merits trade secret treatment, yet offers no evidence in support. Many, if not all, of the AUW data sources are subject to the consumer protections of the Fair Credit Reporting Act. This means that insurers must disclose the use of the data to the applicant and such disclosure would, of course, negate the trade secret claim.

ACLI next argues that MCAS reporting of AUW experience would be duplicative of principles-based reserve reporting of AUW variables pursuant to the Valuation Manual. ACLI does not identify any of the alleged duplication, likely because there is little, if any, overlap. While CEJ has been a proponent of NAIC data warehouses for efficiency in data reporting, unless and until such capability exists and VM-51 contains the data elements relevant for market analysis – data elements not currently envisioned – market regulators should not wait until a scandal has erupted before initiating data collection.

Finally, ACLI offers the industry chestnut – data collection is "premature." In fact, data collection regarding AUW is long overdue. If adopted this month by the MCAS Working Group, the first reporting of the AUW data elements and interrogatories would be 2022 experience reported in 2023. It is clear that ACLI will only begin to offer serious comments when the MCAS Working Group decides to proceed with the

ACLI offers some belated objections to interrogatories about TPAs and MGAs. That issue has been decided and ACLI had opportunity to comment when the issues were discussed. The decision to include interrogatories on TPAs and MGAs has been made and the working group should not discuss or permit ACLI to take up valuable meeting time to rehash a decision that has already been made and adopted by the parent committee.