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Comments for the Center for Economic Justice

To the NAIC Market Conduct Annual Statement Blanks Working Group

Proposed Revisions to Life, Annuity, Auto and Homeowners MCAS Reporting

May 18, 2020

The Center for Economic Justice (CEJ) submits the following comments and recommendation for improvements to MCAS data collection, generally, and for the auto, homeowners, life and annuities lines of business, specifically.

Pandemic Has Revealed Inadequacy of Insurance Market Regulation Data Collection

The pandemic has further exposed the inadequacy of regulatory data collection for market surveillance and market regulation. Regulators have not had and will not have relevant data for monitoring market outcomes for over a year from the outbreak of the pandemic. And even when the data become available – too late for timely, meaningful action – the data will be so aggregated that analysis of specific product markets will not be possible.

The absence of timely and meaningful regulatory data for market analysis and market surveillance contrasts with that for financial analysis and financial surveillance. Financial regulators receive insurer financial data on a quarterly basis so significant changes in, say, the first quarter 2020 can be identified by late May. Financial regulators have granular data on insurer investments – equities, derivatives, bonds – and, consequently, are able to assess the impact on insurers of financial danger in other industries. For example, if residential or commercial mortgage delinquencies spike, financial regulators can review insurer holdings in these instruments and assess the likely impact on insurer financial condition. And financial regulators collect data on a more granular product basis – whether that be the many lines of business for property casualty or the many products lines for life insurance and annuities.

Market regulators have found themselves unequipped to address the sudden excessive rates of many lines of business for which risk exposure has changed virtually overnight, such as the drop in cars on the road and miles driven for personal and commercial auto or the impact of business closings on various commercial lines of business. At the same time, market regulators are also unable to assess the potential spike in claims for other lines of business. Have new COIVD19-related health insurance claims been greater or less than the reduction in non-COVID19 claims due to shutdown of non-essential procedures? As insurers transition rapidly to remote claims settlement in personal auto insurance and remote underwriting for life insurance and annuities – among other rapid digital transformation of the insurance industry – how will regulators assess consumer outcomes in a timely fashion?

The pandemic has emphasized the need for significant improvements in insurance market surveillance data:

1. More frequent data collection – move to quarterly MCAS reporting;
2. More granular product market data collection for life insurance and annuities;
3. Current lawsuit data elements and definitions for auto, homeowners, life and annuities; and
4. Accelerated underwriting definition, interrogatories and data elements for life.

Quarterly Data Collection -- Applicable to All MCAS Lines of Business

One of the major problems with MCAS data collection is that it has largely become part of an audit-style approach to market regulation instead of better helping transform market regulation from auditing to analytics. MCAS has become part of an annual assessment of insurers, instead of a resource of more advanced analytics. As a result, regulators have, in the past, discounted the usefulness of quarterly MCAS reporting – too much data to use and too difficult to fit into the current processes for using MCAS data.

Simply stated, quarterly MCAS reporting is required for market regulators to have the data necessary to meaningfully monitor insurance markets and consumer outcomes in a timely fashion. If quarterly reporting were in place, regulators would have information on 20q1 consumer outcomes by the end of May 2020 and 20q2 outcomes by the end of August 2020. Instead, with current MCAS annual reporting, regulators will have 20q1 and 20q2 data by the end of August **2021 –** far too late to be useful to respond to rapidly changing market condition in the Spring of 2020. Consider the difference between getting travel insurance MCAS data on a quarterly basis versus an annual basis.

In the past, regulators have viewed quarterly MCAS reporting as more work for the states. This need not and should not be the case. First, even with no changes to how MCAS is incorporated in to annual review, quarterly data reporting does not interfere. A state can continue to use MCAS the way it currently does with any particular four-quarter period’s worth of data. Second, no matter how much regulators may want to employ advanced analytics, the absence of necessary data will always preclude such efforts. While Tableau is a useful tool for presenting and viewing and analyzing MCAS data, Tableau can only do so much with annual data.

Finally, there is no structural impediment or significant burden on insurers to report MCAS on a quarterly basis – whether to the NAIC for financial quarterly statements or to statistical agents and advisory organization for premium and claim experience data. Like other reports to statistical agents, insurers program their data systems to produce the required reports – whether financial or statistical – for the relevant experience period at the required due date. After more than a decade of reporting some lines of business, insurers are surely capable of producing MCAS reports on a quarterly basis without significant increases in burden on insurers.

CEJ recommendation: All MCAS lines of business should transition to quarterly reporting as soon as NAIC capabilities permit.

More Granular Lines of Business for Life Insurance and Annuities

CEJ has written extensively in past comments about the need for more granular product line reporting for life insurance and annuities.

The current MCAS provides for life insurance reporting broken out by cash-value products and non-cash value products. This means that the following product categories are reported in one coverage – cash-value products:

- Term life with cash value
- Universal Life – with and without secondary guarantees
- Indexed Universal Life – with and without secondary guarantees
- Variable Life – with and without secondary guarantees
- Variable Universal Life – with and without secondary guarantees
- Whole Life

Non-Cash Life includes:

- Term Life
- Pre-Need
- Final Expense

Within the current MCAS cash and non-cash value categories, these products are significantly different and sold in significantly different markets. Without breaking out these product categories, market analysis is irreparably compromised because problems in one product market can be masked by being combined in larger overall experience. Further, comparisons across companies are compromised because of different relative weights in a company's portfolio of the different products.

For annuities, the current MCAS provides for reporting of fixed and variable: Fixed annuity products include:

- Immediate Fixed Annuity
- Deferred Fixed Annuity
- Qualified Longevity Annuity Contract
- Multi-year Guaranteed Annuity
- Indexed Annuities

Variable annuities include:

- Variable Annuity
- Buffered Annuity
- Contingent Deferred Annuity

Again, products with the current two categories are significantly different and are sold in different markets. As with the life MCAS, the lack of product break-out in the annuity MCS compromises market analysis and effectively eliminates market surveillance capability.

ACLI Proposal Not Serious or Useful

The ACLI proposes, in its May 12, 2020 letter that additions to the Life and Annuity MCAS be limited four interrogatories – two for complaints and two for surrenders – for three products – indexed annuities, variable annuities and university (sic) life. ACLI writes, with no apparent attempt at irony or absurd jest:

> ACLI observes that, while there might be more granular data of interest for each line which perhaps might be justifiably requested, it might be desirable to establish a presumption against gathering additional data, at least initially. This is because: (1) additional data imposes additional costs and administrative burdens on each insurance company and (2) more granular data may mislead regulators into misapprehending a company's market or business operation.

The ACLI proposal is simply not credible for several reasons. First, it is overly-aggregated data – the absence of more granular data – that causes failures in market analysis. The limited data elements suggested by ACLI will guarantee the very thing ACLI fears – "mislead regulators into misapprending a company's market or business operation.

Second, the purposes of more granular data collection are several – to answer questions and concerns already known, to answer questions and concerns not yet contemplated and to permit the use of advanced analytics, like data mining, to discover new insights. ACLI's proposal seeks to keep MCAS in the dark ages – as an auditing tool and not as the raw material for improved market analysis and surveillance.

Third, ACLI convenient leaves out other product markets that have been the source of market problems, including indexed universal life, fails to distinguish products within the stated groups and fails to identify new, complex products like buffered annuities.

Fourth, the disparate treatment of these three product categories from traditional MCAS reporting means an absence of regulator ability for data quality control and accuracy. MCAS reporting is structured to ensure complete and accurate experience reporting. With the ACLI proposal, there is no way to assess the accuracy or completeness of the responses to the four interrogatories.

Fifth, industry claims of administrative burdens are without empirical support and are overstated. Industry reports financial experience by granular product categories. There is an initial expense to program the new reports that take the same experience and reporting it in, say, 12 categories instead of four categories. ACLI also fails to mention the cost benefits of more granular reporting, including fewer reporting errors requiring interaction with the NAIC and state regulators and fewer false positives in MCAS ratios requiring explanation and interaction with regulators.

CEJ Recommendation: Change MCAS Life and Annuity reporting from the current four coverage categories to the following – unless noted otherwise, all are individual products

- Term life with cash value
- Universal Life
- Indexed Universal Life
- Variable Life
- Variable Universal Life
- Whole Life
- Term Life with no cash value
- Pre-Need
- Final Expense
- Other Life
- Immediate Fixed Annuity
- Deferred Fixed Annuity
- Qualified Longevity Annuity Contract
- Multi-year Guaranteed Annuity
- Indexed Annuities
- Variable Annuity
- Buffered Annuity
- Individual or Group Contingent Deferred Annuity
- Other Annuity

Additional Data Elements – Lawsuits – Auto, Home, Life and Annuity

The most recent MCAS lines of business – private flood, disability, long-term care, lender-placed – include five data elements for suits:

1. Number of lawsuits open at beginning of the period
2. Number of lawsuits opened during the period
3. Number of lawsuits closed during the period
4. **Number of lawsuits closed during the period with consideration for the consumer**
5. Number of lawsuits open at end of period

The current private passenger auto and homeowners MCASs include data elements 1, 2, 3 and 5, but not data element 4. The current life and annuity MCAS s contain no data elements for lawsuits.

CEJ Recommendation: The following lawsuit data elements and definitions be included in the private passenger auto, homeowners, life and annuity MCASs with the data definitions used for these data elements in the private flood, disability, lender-placed and long-term care MCASs.

1. Number of lawsuits open at beginning of the period
2. Number of lawsuits opened during the period
3. Number of lawsuits closed during the period
4. **Number of lawsuits closed during the period with consideration for the consumer**
5. Number of lawsuits open at end of period

Additional Data Elements – Accelerated Underwriting – Life Insurance

Life insurers started utilizing accelerated underwriting a few years ago – the use of non-medical data sources to create algorithms for underwriting and pricing. These data sources have included consumer credit data, social media, facial analytics and more. Some of the data sources used by insurers are not subject to the disclosure and consumer protection provisions of the Fair Credit Reporting Act. While accelerated underwriting holds the promise of faster decision-making and broader access, the use of black-box algorithms with little or no regulatory oversight also raises the potential for unfair and unfairly discriminatory treatment of applicants and policyholders. To enable regulators to monitor the effects of accelerated underwriting, we the following additional definition and data elements for MCAS life insurance:

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.

Interrogatories:

- 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.

Data Elements:

For data elements 1B-19 through 1B-27, replicate each data element for accelerated underwriting experience. For example, in addition to current 1B-20:

> 1B-20A: Total Number of New Policies Issued By the Company during the Period Utilizing Accelerated Underwriting.

CEJ Recommendation: Add Data Elements, Interrogatories and Definition to the Life MCAS for Accelerated Underwriting.