



Mike Kreidler- Insurance Commissioner

As required by

The Washington State Administrative Procedures Act

Chapter 34.05 RCW

Matter No. **R2021-07**

**CONCISE EXPLANATORY STATEMENT; RESPONSIVENESS
SUMMARY; RULE DEVELOPMENT PROCESS; AND
IMPLEMENTATION PLAN**

Relating to the adoption of

Temporary prohibition on use of credit history on some personal lines

February 1, 2022

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Section 1: Introduction

Revised Code of Washington (RCW) 34.05.325(6) requires the Office of Insurance Commissioner (OIC) to prepare a “concise explanatory statement” (CES) prior to filing a rule for permanent adoption. The CES shall:

1. Identify the Commissioner's reasons for adopting the rule;
2. Describe differences between the proposed rule and the final rule (other than editing changes) and the reasons for the differences; and
3. Summarize and respond to all comments received regarding the proposed rule during the official public comment period, indicating whether or not the comment resulted in a change to the final rule, or the Commissioner's reasoning in not incorporating the change requested by the comment; and
4. Be distributed to all persons who commented on the rule during the official public comment period and to any person who requests it.

Section 2: Reasons for Adopting the Rule

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 predicative 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 predicative 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.

Section 3: Rule Development Process

On June 22, 2021, the Commissioner filed a CR-101 pre-proposal public notice of intent to adopt rules. The comment period was open through July 31, 2021. Seven comments were received to the rules coordinator.

On July 14, 2021, the Commissioner issued a working draft of the amended rules, notified Property & Casualty insurance stakeholders, and requested comment. The comment period was open through September 17, 2021. Six comments were received to the rules coordinator.

On September 7, 2021, the Commissioner issued a second working draft of the amended rules, notified Property & Casualty insurance stakeholders, and requested comment. The comment period was open through August 6, 2021. Six comments were received to the rules coordinator.

On October 5, 2021, the Commissioner filed a CR-102 proposed rule making. The comment period was open through November 22, 2021. Over eighty individual comments were received to the rules coordinator and more than 3,000 additional form comments received.

On November 23, 2021, the Commissioner held a public hearing to receive oral testimony on the proposed rule. Approximately 106 people attended the public hearing on the Zoom platform. TVW.org also broadcasted the hearing and reported over 350 viewers. We also logged more than 450 individual viewers on Facebook live. Thirty-three individuals provided testimony. The hearing summary in in Appendix A.

The responsiveness summary chart included in Section 5 addresses the comments received. All comments submitted to the rules coordinator all available in the rulemaking file.

Section 4: Differences Between Proposed and Final Rule

None.

Section 5: Responsiveness Summary

Comment	Response
First Stakeholder Draft and CR 101	
The credit reporting dispute system resolves disputes quickly, efficiently, and to consumers' satisfaction.	This rulemaking does not reflect the credit reporting dispute process or any measure of its purported effectiveness. This rulemaking is in response to certain borrowers being afforded consumer protections in their credit reporting while others are not. As the insurance industry claims credit-based insurance scores are an accurate forecast of risk, if the credit history reporting is imprecise, then it degrades the reliability of the use of it as a predictor. The Commissioner considered this comment and made no changes in the proposed rule language.
The CARES Act is working as expected and consumers are benefiting	This rulemaking does not reflect on the consumer protection value of the CARES Act or whether the federal act is benefiting residents of Washington state. This rulemaking is in response to certain borrowers being afforded consumer protections in their credit reporting while others are not. As the insurance industry claims credit-based insurance scores are an accurate forecast of risk, if the credit history reporting is imprecise, then it degrades the reliability of the use of it as a predictor. The Commissioner considered this comment and made no changes in the proposed rule language.
The CARES Act flexibility is accurately recorded in consumers' credit files, as consumers' payment status continues to be reported as it was prior to the accommodation.	If the consumer's current credit history is reported the same as it was prior to the CARES Act, even though penalties should have been applied, then it is not accurately reporting the current credit history. Furthermore, shortly after the CARES act was passed in 2020, Experian (a credit reporting company) reported "As part of the recently passed Coronavirus Aid, Relief and Economic Security (CARES) Act, the federal government put in place special protections that change the way some creditors report information to credit bureaus." For example, see section 4021

	<p>of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law 116-136. As the insurance industry claims credit-based insurance scores are an accurate forecast of risk, if the credit history reporting is imprecise, then it degrades the reliability of the use of it as a predictor. The Commissioner considered this comment and made no changes in the proposed rule language.</p>
<p>As proposed in R 2021-07, many lower-risk insureds will pay more, subsidizing the cost of insurance for higher risk insureds.</p>	<p>The Commissioner recognizes industry's claim that credit scores have a correlation as a predictor of claims being filed, it is also true that unfair subsidies would occur in the absence of the proposed rule. Borrowers afforded consumer protections in their credit reporting would be subsidized by other borrowers who are not afforded those protections. The Commissioner considered this comment and made no changes in the proposed rule language.</p>
<p>This rule is unfair to people who are financially responsible.</p>	<p>While it is correct that people with favorable credit histories will pay higher premiums due to the rule, it is also true that unfair subsidies would occur in the absence of the proposed rule. Borrowers afforded consumer protections in their credit reporting would be subsidized by other borrowers who are not afforded those protections. The Commissioner considered this comment and made no changes in the proposed rule language.</p>
<p>The distortion pricing structures by the removal of a significant component (credit history) necessarily violates the rate standard. The resulting distortion has resulted in new rates that are excessive for many policyholders, inadequate for many others, and unfairly discriminatory for most. This has led to surcharges for many policyholders and subsidies for many others without any relationship to the level of risk and claims history. The removal of credit history in calculating an insured's premium without adjustments to other rating factors means that there is no assurance the company's rate filing complies with the rate standard of RCW</p>	<p>Unfair discrimination means treating similarly situated people differently in terms of insurance risks. Treating people the same, even if they have different characteristics, is not unfair discrimination. The law does not require the use of the most highly segmented rating plan possible.</p> <p>The rule does not prevent insurers from filing adjustments to other existing rating factors or increasing segmentation by introducing new rating factors under chapter 48.19 RCW. The Commissioner considered this comment and made no changes in the proposed rule language.</p>

48.19.020 and WAC 284-24-065.	
<p>The OIC should consider modifying their rules for permitted elements utilized to develop credit-based insurance scores to disregard data that reflects CARES Act accommodations. These elements are identified in data held by credit bureaus through certain data codes. Those codes are “natural disaster,” “forbearance,” and “deferment.” This proposed directive is similar to the previously established guidelines in WAC 284-24A-055(2)(a) and (b) dealing with no hit (no credit history) and thin files (insufficient credit history to generate a score).</p>	<p>This will not fully address the imbalance in credit history reporting. In this scenario, those that are accommodated by the government protections simply have a data code linked to them, while the others that were not afforded the protections still take the credit history penalty. As the insurance industry claims credit based insurance scores are an accurate forecast of risk, if the credit history reporting is imprecise, then it degrades the reliability of the use of it as a predictor. The Commissioner considered this comment and made no changes in the proposed rule language.</p>
<p>It is unclear how, and why, the Commissioner chose the three-year time frame for prohibiting the use of credit history for rating purposes.</p>	<p>The Commissioner understands that at some point after the public health emergency ends credit reporting will return to normal. The three-year time frame is to coincide with WAC 284-24-140’s requirement that Insurers must update each policyholder’s insurance score at a minimum of every three years. This rule was established in 2015 in accordance with industry’s practice. At the time of the 2015 rulemaking, the Commissioner was commended for considering the three-year standard similar to one adopted by the National Conference of Insurance Legislators in 2002 and readopted in 2015. The Commissioner considered this comment and made no changes in the proposed rule language.</p>
<p>The OIC fails to distinguish between a Credit Score that is used for determining an individual’s credit worthiness and a Credit Based Insurance Score (“CBIS”). Unlike a financial Credit Score that uses credit history only, CBIS are specialized for insurance underwriting purposes and are predictive of future insurance losses and related costs using multiple factors of which credit history is only one.</p>	<p>The Commissioner and the OIC are aware of this distinction.</p> <p>For insurers with Credit Based Insurance Scoring Models that use both credit history and non-credit factors, the rule does not prevent them from filing rating plans that use those non-credit factors. The Commissioner considered this comment and made no changes in the proposed rule language.</p>
<p>Disaster-related credit history (including the Pandemic history) does not adversely</p>	<p>Natural Disaster Coding is acted on a voluntary basis by the loan furnisher. When</p>

<p>impact CBIS because it is not included in the CBIS.</p>	<p>it is reported, it does affect a consumer's credit history by setting the instance that normally would negatively affect the consumer to neutral. This rulemaking is in response to certain borrowers being afforded consumer protections in their credit reporting while others are not. As the insurance industry claims credit-based insurance scores are an accurate forecast of risk, if the credit history reporting is imprecise, then it degrades the reliability of the use of it as a predictor. The Commissioner considered this comment and made no changes in the proposed rule language.</p>
<p>Update rule to incorporate CARES Act anomalies as "Prohibited Data Elements" and prohibit the use of that definition in a credit based insurance score for three years after the end of the public health emergency.</p>	<p>This would still not fully address the imbalance in credit history reporting. In this scenario, those that are accommodated by the government protections simply have a data code linked to them, while the others that were not afforded the protections still take the credit history penalty. As the insurance industry claims credit based insurance scores are an accurate forecast of risk, if the credit history reporting is imprecise, then it degrades the reliability of the use of it as a predictor. The Commissioner considered this comment and made no changes in the proposed rule language.</p>
<p>Insert the NCOIL "Extraordinary Life Circumstances" model draft</p>	<p>This suggestion is inconsistent with the intent of the rule since it would result in similar consumers being charged different premiums, in violation of RCW 48.18.480. The NCOIL model law depends on individual consumers contacting their insurer, creating an unfair difference in treatment between consumers who know enough to request special treatment and those who don't. The NCOIL model act allows insurers complete latitude to determine whether to grant an exception and, if so, what the accommodation should be. This would likely result in unfair discrimination. The Commissioner considered this comment and made no changes in the proposed rule language.</p>
<p>Develop an expedited rate review process</p>	<p>Under RCW 48.19.040, rates for personal</p>

<p>so companies can adjust rates to be effective upon filing.</p>	<p>lines must be approved prior to use. The Commissioner considered this comment and made no changes in the proposed rule language.</p>
<p>CBIS is an objective, fact and data driven metric that enhances fairness for all consumers.</p>	<p>Due to the national public health emergency the federal government took action where it could to assist the public from the economic disruption the pandemic has caused.</p> <p>However, the protections offered by the federal government relating to credit reporting is not required to be afforded to ALL consumers-</p> <ul style="list-style-type: none"> • only the ones where the loan furnisher, at its option, makes an accommodation to the borrower (CARES Act Sec 4021), or • on a federally backed mortgage (CARES Act Sec 4022), or • FHV vs Conventional loans for example- 30% of mortgages are not federally backed according to the National Housing Law Project • For borrowers of federally backed student loans (CARES Act Sec 3513). <ul style="list-style-type: none"> ○ As opposed to private student loans through banks, credit unions, or even a school. <p>The Commissioner has found this imbalance of protection for credit history across ALL consumers 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. The Commissioner considered this comment and made no changes in the proposed rule language.</p>
<p>Second Stakeholder Draft</p>	
<p>The addition of Section 7 greatly expands the rule and retroactively impacts applications and placement of customers that was determined <i>prior to</i> the effective date of the June 20, 2021 Emergency</p>	<p>Some groups of insurance companies could have rates that vary between companies based in part on consumers' credit information. Section 7 is necessary in order to remove the impact of credit on</p>

Rule.	<p>these consumers' premiums.</p> <p>Section 7 prevents the rule from granting an unfair competitive advantage to groups of insurance companies that used credit history when determining in which insurance company each consumer was offered coverage. The Commissioner considered this comment and made no changes in the proposed rule language.</p>
Section 7 can negatively impact consumers by causing them to lose company-specific longevity discounts.	The Commissioner considered this comment and made changes in the proposed rule language.
If Section 7 remains, the OIC should allow insurers flexibility in the language used in the notice that best suits their business model on whether to contact an agent or customer service by adding “or” into the language	The Commissioner considered this comment and made changes in the proposed rule language.
Section 7’s stand-alone notice needs to indicate it is not an offer to renew the policy.	The Commissioner considered this comment and made changes in the proposed rule language.
Remove Section 5 and require insurers develop rates based on pricing models that exclude credit.	This rule is temporary. By using a neutral rate factor now it is more efficient to reinsert the use of credit history as a rate factor once the effective period is over. The Commissioner considered this comment and made no changes in the proposed rule language.
Change section 7 to be a standard that prohibits disclosures to consumers that are false, misleading, selective to only a few insureds.	RCW 48.01.030 already requires insurers to act in good faith, abstain from deception, and practice honesty and equity in all insurance matters. Additionally, chapter 48.30 RCW prohibits many types of unfair practices and frauds in the insurance industry that would impact consumers. The Commissioner considered this comment and made no changes in the proposed rule language.
CR 102	
Credit Score is a display of personal responsibility and therefore an accurate measure of risk.	Due to the national public health emergency the federal government took action where it could to assist the public from the economic disruption the pandemic

	<p>has caused.</p> <p>However, the protections offered by the federal government relating to credit reporting is not required to be afforded to ALL consumers-</p> <ul style="list-style-type: none"> • only the ones where the loan furnisher, at its option, makes an accommodation to the borrower (CARES Act Sec 4021), or • on a federally backed mortgage (CARES Act Sec 4022), or • FHV vs Conventional loans for example- 30% of mortgages are not federally backed according to the National Housing Law Project • For borrowers of federally backed student loans (CARES Act Sec 3513). <ul style="list-style-type: none"> ○ As opposed to private student loans through banks, credit unions, or even a school. <p>The Commissioner has found this imbalance of protection for credit history across ALL consumers 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. The Commissioner considered this comment and made no changes in the proposed rule language.</p>
<p>This significant rise in the cost of insurance to people on a fixed income is hurting senior citizens.</p>	<p>The Commissioner does understand that for some consumers insurance rates have gone up and for others it has gone down. The Commissioner is also sensitive that any costs of goods and services that go up will be difficult on individuals with a fixed income. While the removal of the use of credit history as a discount has affected some senior citizens with increases in insurance premiums, it has assisted others that have paid off all of their debt and no longer have revolving credit accounts. The Commissioner considered this comment and made no changes in the proposed rule language.</p>

<p>After this emergency rule was overturned in the courts in October of 2021 we now have insurance companies offering credit based discounts again, which is saving Washington consumers who have a history of filing few to zero insurance claims millions of dollars in our State.</p>	<p>This is a fundamental misunderstanding that credit based insurance scores reflect a history of one's claims that have been filed. They do not. They are used as a predictor and have no actual data about any insureds past claims. There is a separate rating factor that directly address claims filed. The Commissioner considered this comment and made no changes in the proposed rule language.</p>
<p>This rule is against the will of the Legislature.</p>	<p>This rulemaking is separate from any Legislative action and is in response to certain borrowers being afforded consumer protections in their credit reporting while others are not. As the insurance industry claims credit-based insurance scores are an accurate forecast of risk, if the credit history reporting is imprecise, then it degrades the reliability of the use of it as a predictor.</p> <p>Regarding Senate Bill 5010 (2020), the failure of agency request legislation that has been rewritten in such a way that it no longer comports with the Commissioner's original purpose for requesting it, says nothing about the Commissioner's existing statutory rulemaking authority. As a general principle, Washington courts do not assign any meaning to the Legislature's failure to pass a bill into law. This is especially true where nothing in the language of the proposed bill, or the legislative history includes any discussion of the Commissioner's existing rule making authority, and the possibility of an emergency rule was never raised before the legislature while the failed legislation was before them. The Insurance Code, when read as a whole, gives broad authority to the Commissioner to regulate insurance, and to enforce the provisions of the Insurance Code, and to adopt rules enforcing the provision of the Insurance Code. The Commissioner has the authority to review rates and rating methodologies to ensure that rates are not "excessive, inadequate, or unfairly discriminatory," and to promulgate rules to ensure that is the case. This authority is</p>

	<p>consistent with his authority to establish rules to implement the limited authority insurers have to use credit scoring/histories.</p> <p>The Commissioner considered this comment and made no changes in the proposed rule language.</p>
Public Hearing	
This rule will cause more uninsured drivers.	<p>Uninsured drivers are an issue that affects all drivers, especially since the State of Washington requires proof of minimum financial requirements to use a vehicle, which can include auto liability insurance coverage. This comment is assuming that if people have any increase in insurance premiums, they will simply not purchase insurance. Insurance premiums rise for many reasons. Some consumers have found a portion of their increases may be attributed to the emergency rule prohibiting the use of credit history on their rates. Some may find their age is a contributor to a price increase. Some may find a change in risk profile that has led to an increase. In addition, some currently uninsured drivers with poor credit may be incentivized to purchase insurance. The Commissioner considered this comment and made no changes in the proposed rule language.</p>
This rule is forcing people to take less coverage.	<p>The rule will result in some consumers being charged higher premiums and some lower premiums. Consumers facing premium increases might mitigate the increases by purchasing less coverage. Similarly, consumers receiving premium decreases might be incentivized to purchase additional coverage. The Commissioner considered this comment and made no changes in the proposed rule language.</p>
Insurance companies are making a huge profit from this rule.	<p>The rule should not result in a change in overall profitability for insurers. Though insurers will collect more premium from some consumers, this will be balanced by other consumers being charged less. The Commissioner considered this comment and made no changes in the proposed rule language.</p>
The proposed rule process is not in	The Commissioner followed the statutory

<p>alignment with the Administrative Procedure Act.</p>	<p>requirements for rulemaking that are in the state Administrative Procedures Act found in chapter 34.05 RCW. The Commissioner considered this comment and made no changes in the proposed rule language.</p>
<p>Nothing unique in the CARES act that requires creditors to change their reporting of consumer credit history. Creditors extended forbearance and deferrals to consumers before and after the CARES Act and reported such deferrals as current.</p>	<p>Shortly after the CARES act was passed in 2020, Experian (a credit reporting company) reported “As part of the recently passed Coronavirus Aid, Relief and Economic Security (CARES) Act, the federal government put in place special protections that change the way some creditors report information to credit bureaus.” For example, see section 4021 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law 116-136. The Commissioner considered this comment and made no changes in the proposed rule language.</p>
<p>New section WAC 284-24A-090(4)(b) in the Proposed Rule prohibits the use of credit history to determine a consumer's eligibility for any payment plan whatsoever. This provision of the Proposed Rule is beyond the scope of the Commissioner's authority because it interferes with and materially alters the financial relationship between the consumer who has the right to determine how to pay for coverage and the insurer who has the right to determine what forms of payment are acceptable. The necessary corollary is that the Commissioner's authority is limited to determining eligibility for coverage and the rates based on which the resulting premium is calculated; it does not extend to regulating how a consumer chooses to pay or finance that premium or the forms of payment acceptable to the insurer.</p>	<p>The Insurance Code, when read as a whole, gives broad authority to the Commissioner to regulate insurance, and to enforce the provisions of the Insurance Code, and to adopt rules enforcing the provision of the Insurance Code. The Commissioner is charged to make sure that no insurer shall make or permit any unfair discrimination between insureds or subjects of insurance having substantially like insuring, risk, and exposure factors, and expense elements, in the terms or conditions of any insurance contract, or in the rate or amount of premium charged therefor, or in the benefits payable or in any other rights or privileges accruing thereunder. However, the protections offered by the federal government relating to credit reporting is not required to be afforded to ALL consumers, thus creating consumers with similar insurance risk being treated differently. The Commissioner considered this comment and made no changes in the proposed rule language. The Commissioner has the authority to review rates and rating methodologies to ensure that rates are not “excessive, inadequate, or unfairly discriminatory,” and to promulgate rules to ensure that is the case. This authority is consistent with his authority to establish</p>

	<p>rules to implement the limited authority insurers have to use credit scoring/histories. The Commissioner considered this comment and made no changes in the proposed rule language.</p>
<p>When the CARES Act expires, consumers will not lose the benefit of any accommodations, and lenders may not retroactively add a delinquency status for the Accommodation Period. Thus, the "flood" of negative credit history that the OIC asserts will transpire when the protections of the CARES Act expire will not occur.</p>	<p>By its terms, the CARES Act accommodations related to credit reporting under the Fair Credit Reporting Act only cover the period beginning January 31, 2020 through the later of either 120 days after the enactment of section 4021 or 120 days after the date the national emergency concerning the COVID-19 outbreak terminates. The law does not extend the accommodation protections beyond the COVID-19 national emergency's termination. Therefore, when the CARES Act protections conclude, the accurate reporting will begin again. The state of the economy due to COVID-19 and ongoing variants remain in flux and how it unfairly affects certain populations is becoming apparent. The Commissioner understands that at some point after the public health emergency ends credit reporting will return to normal. The three-year time frame is to coincide with WAC 284-24-140's requirement that Insurers must update each policyholder's insurance score at a minimum of every three years. This rule was established in 2015 in accordance with industry's practice. At the time of the 2015 rulemaking, the Commissioner was commended for considering the three-year standard similar to one adopted by the National Conference of Insurance Legislators in 2002 and readopted in 2015. The Commissioner considered this comment and made no changes in the proposed rule language.</p>
<p>Contrary to the Commissioner's assumptions, there is evidence that the impact of the CARES Act and the financial relief afforded to consumers during the pandemic has improved the credit scores of many consumers.</p>	<p>The Commissioner recognizes the positive impacts of the state and federal emergency responses to the economic harm caused by the COVID-19 pandemic. When a large portion of consumers have been afforded protections and accommodations relating to changing the accuracy of their credit history in their credit reporting, it makes sense credit scores would improve. But at the</p>

	<p>individual level, some people were not afforded the same level of protections and accommodations. As the insurance industry claims credit-based insurance scores are an accurate forecast of risk, if the credit history reporting is imprecise, then it degrades the reliability of the use of it as a predictor. The Commissioner considered this comment and made no changes in the proposed rule language.</p>
<p>The scope of the Proposed Rule exceeds the parameters of the CR-101 and CR-102 Notices.</p>	<p>The Proposed Rule is within the scope of the CR-101 and CR-102. The CR-101 clearly establishes the subject matter of the proposed rule making as well as the statutes authorizing the Commissioner to engage in the rule making. In the CR-101, the Commissioner is clear that the rule making is necessary to mitigate the impacts of the use of credit histories on consumers as a result of the disruption to the credit reporting process as the state and federal government respond to the COVID-19 pandemic. The CR-102 contained the full text of the proposed rule and the notice form as required by WAC 1-21-020(1). Throughout the CR-101 and CR-102 it is clear that credit histories were the subject of the rule making. The Commissioner considered this comment and made no changes in the proposed rule language.</p>
<p>A new proposed rule must provide an adequate implementation period that accounts for the lack of OIC resources and the complexity of revising and implementing new rate filings.</p>	<p>The Commissioner will comply with the requirements of RCW 34.05.380(2) when implementing any new proposed rule. The Commissioner considered this comment and made no changes in the proposed rule language.</p>

Section 6. Activities After Public Hearing

In response to comments submitted during the rulemaking process and received at the public hearing, on December 6, 2021, the Commissioner sent a voluntary request for data from property and casualty insurers. The Commissioner specifically requested information regarding insureds' premium change for renewal policies in effect from August 1, 2021 to December 1, 2021, for private passenger automobile six-month term and one-year term, homeowners, and renter policies. OIC also requested information regarding sample language used by the company to notify insureds of the emergency

rule prohibiting the use of credit history (R2021-02 and R-2021-19; WSR 21-07-103 and WSR 21-15-058).

Additionally, after the comment deadline imposed in the CR-102 (WSR 21-20-126), the Commissioner continued to receive additional comments regarding the proposed rule. Furthermore, some of these comments were directed at issues with the voluntary data request. Though the Administrative Procedure Act does not require an agency to collect, review, or address comments received after the deadline set in the CR-102 (WSR 21-20-126), the Commissioner has reviewed additional comments received in order to understand the concerns of interested parties.

In order to proceed with adoption of the proposed rule, of the comments received after the deadline imposed in the CR-102 (WSR 21-20-126), the Commissioner was not able to review or consider comments received after January 31, 2022. Additionally, the Commissioner will not keep any comments received after the filing of the rule in the rulemaking file.

To the extent the comments raised new issues or concerns, those comments are addressed here:

Comment	Response
<p>The basis for OIC’s voluntary data request (RCW 48.02.060) must give way to the more specific statute authorizing the collection of data as the exercise of the Commissioner’s market oversight authority in chapter 48.37 RCW.</p>	<p>State agencies, including the OIC, regularly request information from companies as part of the rulemaking process to understand the impacts of the proposed rules.</p> <p>This voluntary data survey was requested of companies as a result of comments and testimony received during the rulemaking process. Up to this point, not a single insurance company writing policies in Washington had engaged in the rulemaking process by providing comments or testifying at the public hearing. The voluntary data survey was an additional attempt by the OIC to hear from the companies directly.</p> <p>The data requested is aggregated and does not contain any confidential data; the data would simply substantiate, or not, the claims made by industry trade groups as to the impacts of the removal of credit history in rate setting.</p>
<p>The data request is more about the impact of the emergency rule than the pending proposed rule.</p>	<p>The Commissioner’s voluntary request for data is in response to comments from some insureds reporting that their rates went up, and in some cases, that they were told by their insurance companies the</p>

	<p>rate increase was attributable to the prohibition on the use of credit history. The effects of the emergency rule should not be measurably different than the proposed rule and is comparable data the Commissioner has to draw on at this time.</p> <p>Companies have been given several opportunities to provide input throughout the rulemaking process and have not elected to directly do so; the voluntary data survey was an additional attempt by the OIC to hear from the companies directly.</p>
<p>The data should be collected pursuant to chapter 48.37 RCW as opposed to RCW 48.02.060 in order to protect individual company responses from public disclosure.</p>	<p>The Commissioner used his general authority for this request, in recognition that it would be voluntary. The information requested did not include any individual insured's identifying information.</p>
<p>The data requested will not accurately reflect the changes made to premiums due to the emergency rule because: 1) the rate changes may include non-credit-related factors; 2) the voluntary nature of the request makes it incomplete; 3) there was not enough time allotted to complete the request; 4) the time period for the data requested is not a full renewal cycle; 5) the data request targets a subset of companies- namely those writing over \$1,000,000 in annual premium.</p>	<p>Although some companies when submitting data segregated it to include only the effects of credit-related factors, the Commissioner recognizes that the data received will include rate changes based on both credit and non-credit-related factors. The sample notifications the OIC received both as a part of this survey and via consumer complaints in 2021 indicated that the OIC's removal of credit was the reason rates increased and did not point out other factors. OIC supports transparency to consumers as to what factors cause rate increases and will be exploring how to require companies to provide that transparency to their consumers in the near future.</p> <p>That these companies were able to do it in the time requested is also appreciated and demonstrates that the time allotted was not unreasonable. Moreover, extensions were granted if requested, and an additional opportunity was extended to companies in January 2022 to complete the survey.</p> <p>The type of companies that were requested to submit data represented 99 percent of auto and homeowner markets. To have expanded the request would have risked soliciting unmeaningful data.</p>
<p>The Commissioner should re-open the public comment period.</p>	<p>The Commissioner has not put forth any new proposed rule language on which to</p>

	<p>receive public comment. The Commissioner declines this request, but has nevertheless reviewed comments received after the public comment period.</p> <p>If the comments or data received changes the proposed rule language, then the OIC would follow the APA and file a supplemental CR 102 with the new rule language, with a new comment period and public hearing.</p>
<p>The voluntary data survey questions exceed the scope of the proposed regulation the public testimony in the rule-making record.</p>	<p>Companies have been given several opportunities to provide input throughout the rulemaking process and have not elected to directly do so; the voluntary data survey was an additional attempt by the OIC to hear from the companies directly.</p> <p>This voluntary data survey was requested of companies as a result of comments and testimony received during the rulemaking process.</p>
<p>The voluntary data survey is an inquiry into companies' commercial free speech rights</p>	<p>The data survey was voluntary and attempt to hear from the companies directly due to a lack of participation during the rulemaking process.</p>
<p>Aggregation of consumer rate implications data would have been more appropriate, more efficient for insurers, and consistent with insurer confidentiality and proprietary concerns.</p>	<p>The Commissioner used his general authority for this request, in recognition that it would be voluntary. The information requested did not include any individual insured's identifying information.</p>
<p>The OIC has data and information on the rate implication resulting from the emergency regulation as part of the rate filings submitted by insurance in compliance with the emergency regulation.</p>	<p>The data survey was an attempt to hear from companies directly after testimony provided at the public hearing.</p>
<p>With regard to the data survey, it is disputed that OIC has received responses from only a small percentage of companies</p>	<p>Of the companies OIC surveyed, only 8.8% provided the requested data. Another 19.1% responded, but did not provide data for various reasons.</p>
<p>The data survey instructions are not calibrated to gather information relevant to the emergency rule's effect on seniors.</p>	<p>Through the voluntary data survey, OIC sought to gain insight from companies into the effects of the emergency rule on all consumers.</p>

Section 7: Implementation Plan

A. Implementation and enforcement of the rule.

After the permanent rule is filed and adopted with the Office of the Code Reviser:

- Policy staff will distribute copies of the final rule and the Concise Explanatory Statement to all interested parties through the State's GovDelivery email system.
- The CR 103 documents and adopted rule will be posted on the Office of the Insurance Commissioner's website.
- Questions will be addressed by Office of the Insurance Commissioner's staff as follows:

Type of Inquiry	Division
Insurer assistance	Rates, Forms and Provider Networks
Rule Content	Policy
Authority for rules	Policy
Enforcement of rule	Rates, Forms and Provider Networks, Legal Affairs
Market Compliance	Company Supervision

B. How the Agency intends to inform and educate affected persons about the rule.

The agency will meet with and provide assistance to any affected property insurer. The agency will provide educational materials on its website for affected consumers.

C. How the Agency intends to promote and assist voluntary compliance for this rule.

The agency will meet with and provide assistance to any affected property insurer.

D. How the Agency intends to evaluate whether the rule achieves the purpose for which it was adopted.

The agency will monitor the rate filings and personal line market to better understand how the temporary prohibition on the use of credit history on homeowners, renters, and private auto insurance rates and eligibility of coverage is affecting consumers and companies.

Appendix A

CR-102 Hearing Summary

Summarizing Memorandum

**To: Mike Kreidler
Insurance Commissioner**

**From: David Forte
Presiding Official, Hearing on Rule-making**

Matter No. R2021-07

Topic of Rule-making: Temporary prohibiting the use of credit history

This memorandum summarizes the hearing on the above-named rule making, held on Tuesday November 23 at 9:30am on ZOOM meeting# 835 0282 3760 over which I presided in your stead.

Due to the public outreach to the agency on this rulemaking, we conducted the hearing on the Zoom platform to ensure safety against the public health crisis. We used the webinar feature to ensure that anyone who wanted to provide comment was able to and the hearing was orderly for the attendees. We tripled the licensed number of participants we could host on the Zoom platform to accommodate the expected number attendees. Due to the over three thousand comments we received on this rulemaking, we anticipated a significant number of speakers and therefore limited testimony to two minutes to accommodate time restraints. We announced that if anyone wanted to provide additional comments after everyone was able to provide their initial comment, we would follow up and provide time to do so. We had approximately 106 people attend the hearing. The hearing was also broadcasted on TVW.org, which reported over 350 viewers during the hearing. We had thirty-three people testify, with five in support, twenty-eight in opposition. We had six people provide additional comments after their initial testimony. The meeting lasted approximately two hours.

Contents of the presentations made at hearing:

There was testimony relating to the unfairness on the use of credit history to charge fair or poor credit scores higher insurance premium amounts than people with good or excellent credit scores regardless of driving record.

There was testimony that COVID-19 has disrupted credit reporting.

There was testimony of individuals that explained situations of themselves, family, friends, and clients that are on fixed incomes, and/or limited income, that have received an insurance cost increase due to the emergency rule R2021-02 and were opposed to this rulemaking.

Some testimony was provided that mentioned people with lower income can have good credit history and this rule impacts them.

There were several testimonies that reported an increase to the insurance premiums that are solely related to Emergency Rule 2021-02 prohibition on the use of credit history and oppose this rulemaking.

There were several testimonies that said the length of the propose rulemaking for three years after the conclusion of the COVID-19 public health emergency is too long and does not equate with an emergency.

There were several testimonies that they have worked their whole life for a good credit score and it is unfair they should be penalized by this rulemaking.

There was testimony that the proposed rulemaking is outside the authority of the Insurance Commissioner.

There were several testimonies that said this type of rulemaking should require legislative action, not executive rulemaking.

There was some testimony that reiterated their written comments on the rulemaking.

There was testimony that there has been over 500,000 individual complaints shared to the Consumer Financial Protection Bureau with 58% relating to consumer credit reporting during the COVID-19 public health emergency. Incorrect information on one's credit report was the most common issue tied to lender non-compliance with state and federal reporting requirements and accommodations and inaccurate reporting with voluntary deferment and forbearance. This type of reporting inaccuracies will be ongoing for years due to COVID-19.

There was testimony that credit-based insurance scores are the opposite of discrimination and benefit consumers.

There was testimony that this rule should have had premium capping and rate stability to help consumers absorb premium changes.

There were several testimonies from insurance producers explaining that the emergency rule did not help their clients that worked hard to have a good credit score.

There was testimony concerned that this rulemaking creates huge profits for insurance companies.

There was testimony suggesting the auto and homeowner rates are higher in California where they prohibit the use of credit history in insurance rates.

There was testimony that women generally have lower credit scores due to historic wage gap between men and women, which also means they are charged higher insurance rates.

There was testimony that compared insurance companies using credit-based insurance scores to landlords using a credit report for a potential renter.

There were several testimonies that some consumers may lose accumulated benefits and coverages when the switch insurance companies.

There was testimony that 21.3% of African American consumers have a credit score under 620 while only 5.4% white Americans have a credit score under 620. This causes a significant penalty on insurance rates for African Americans as opposes to white Americans.

There was testimony that credit scores are a reflection of personal responsibility.

There was testimony that this rulemaking should only apply to new insurance consumers.

The hearing was adjourned.

SIGNED this 23rd day of November, 2021



David Forte, Presiding Official