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Colorado Department of Regulatory Agencies
Division of Insurance
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Re: Comment on DRAFT Bulletin No. B-5.4X, Credit Insurance Scoring Restrictions Due to COVID-19

To Whom It May Concern:

I write on behalf of the Consumer Data Industry Association ("CDIA")[1] to express concern with the proposed DRAFT Bulletin No. B-5.4X ("Proposed Draft Bulletin"), recently issued by the Division of Insurance ("Division"). The proposal, while well-intentioned to attempt to serve consumers impacted by COVID-19, could hurt the very consumers the proposal is trying to protect by eliminating predictive, reliable information. There are also several legal and operational problems with the Proposed Draft Bulletin, which are outlined below. We appreciate the critical need to help consumers through COVID-19 crisis, but the present proposal will not likely have the results the Division seeks. We would welcome a chance to meet with the Division to find places of agreement that will maintain a safe, sound insurance risk management process, balanced with the needs of consumers to be protected in this unprecedented time.

Before turning to the problems created for consumers by the Proposed Draft Bulletin, some background will help the Division.

1. The credit reporting industry and our response to the pandemic

COVID-19 is a public health crisis that has turned in to an economic crisis. As a result of the pandemic, many consumers have fallen into financial difficulty. Consumer reporting agencies ("CRAs") are doing their part to help minimize the impact of the pandemic on consumers' credit histories. To better understand available consumer credit assistance for their credit during the COVID-19 crisis, there are several basic points to keep in mind:

[1] The Consumer Data Industry Association is the voice of the consumer reporting industry, representing consumer reporting agencies, including the nationwide credit bureaus, regional and specialized credit bureaus, background check and residential screening companies, and others. Founded in 1906, CDIA promotes the responsible use of consumer data to help consumers achieve their financial goals and to help businesses, governments, and volunteer organizations avoid fraud and manage risk. Through data and analytics, CDIA members empower economic opportunity all over the world, helping ensure fair and safe transactions for consumers, facilitating competition, and expanding consumers' access to financial and other products suited to their unique needs.

- Lenders and creditors are strongly encouraged to offer accommodations with consumers, like forbearance programs, deferred payment plans, and payment holidays.[2] These accommodations can help consumers through financial distress for financial hardships, including those caused by natural and declared disasters.
- Consumer reporting agencies use a data reporting format (Metro 2®) that guides lenders and creditors to report payment accommodations to credit bureaus for consumers who are in financial distress (forbearance plans or deferred payment plans), or who are subject to natural or declared disasters.
- These Metro 2® reporting codes have been in place since before the terrorist attacks of September 11, 2001, and have helped consumers in numerous national disasters, such as hurricanes, floods, fires and tornadoes, and now, the COVID-19 pandemic.
- The leading third-party score models produced by VantageScore and FICO, and other third-party CBIS, are designed to minimize the negative impact of payment accommodations reported to CRAs by lenders. However, aside from these accommodations, there may be other factors that negatively impact a consumer's score, such as the ratio of loan balance to credit limit.

2. Federal law and the pandemic

Congress created a national resolution to a national crisis. In response to the COVID-19 pandemic, Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act on March 27, 2020.[3] The CARES Act delivered an important win for consumers seeking help to protect their credit during and following the pandemic. The law allows consumers, who would otherwise be reported as late, to be reported as current. This consumer benefit applies to Colorado insurance consumers and obviates the need for the Proposed Draft Bulletin.

The CARES Act (Sec. 4021) amends the federal Fair Credit Reporting Act ("FCRA").[4] Under the FCRA, as amended by the CARES Act, when a lender or creditor that furnishes information to a CRA, and that furnisher has placed a consumer into account forbearance plan or agrees to modified

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[2] On March 9, 2020, five federal financial institution regulators and the state financial regulators association reminded financial institutions of the need to meet the financial needs of customers and members affected by the coronavirus. Press Release, *Agencies encourage financial institutions to meet financial needs of customers and members affected by coronavirus*. These six institutions issuing the notice are the Board of Governors of the Federal Reserve System ("Federal Reserve"), Consumer Financial Protection Bureau ("CFPB"), Federal Deposit Insurance Corporation ("FDIC"), National Credit Union Administration ("NCUA"), Office of the Comptroller of the Currency ("OCC"), and Conference of State Bank Supervisors ("CSBS"), which includes the Colorado Division of Banking. For example, "in the event of a major disaster or emergency, the Federal Reserve encourages banking organizations to work with affected borrowers and other customers," which can include "[o]ffering payment accommodations, such as allowing loan customers to defer or skip some payments or extending the payment due dates, which would avoid delinquencies and negative credit bureau reporting caused by disaster-related disruptions. Fed. Reserve *SR 13-6/CA 13-3: Supervisory Practices Regarding Banking Organizations and their Borrowers and Other Customers Affected by a Major Disaster or Emergency*, https://www.federalreserve.gov/supervisionreg/srletters/sr1306.htm (March 29, 2913).

[3] Pub. L. 116-136.

[4] 15 U.S.C. § 1681 *et seq.*

payments, that furnisher must report that obligation or account as "current," or as the status reported prior to the accommodation during the period of accommodation, unless the consumer becomes current. This applies only to accounts for which the consumer has fulfilled requirements pursuant to the forbearance or modified payment agreement..[5] Reporting a consumer as current will be helpful to consumers to minimize credit score impacts.

3. The proposed draft bulletin

The proposal directs "property and casualty insurers to not use any adverse credit information that is related to the COVID-19 emergency in determining the rate/premium of property or casualty policies of insurance." The proposal also expands the C.R.S. Sec. 10-4-116 exemptions so that insurers must exempt a list of "extraordinary life events related to the COVID-19 emergency from the credit-based insurance score" including "[c]ollection activity related to late payments."

4. Concern with the proposed draft bulletin

A. By removing a reliable predictor of risk, the Proposed Draft Bulletin makes it harder for insurers to assess risk, which could increase the cost of insurance for all consumers

Credit reports are reliable and predictive of credit risk[6] and, when used as a factor for insurance decisions, credit information is a racially neutral,[7] predictive indicator of insurance risk.[8] By removing the consideration of accurate, adverse information, the Division is removing one

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[5] Any state limits on credit reporting – whether related to the *furnishing* or *reporting* of credit information – in the wake of the COVID-19 crisis will be preempted by the FCRA. The FCRA ensures a national credit reporting system through preemption provisions in FCRA § 625 (15 U.S.C. § 1681t). The FCRA provides for multiple forms of preemption of state credit reporting laws and bills, and any COVID-19 related credit report restrictions would be preempted by at least two of those provisions, § 1681t(a) (conflict preemption) and § 1681t(b) (subject matter preemption). Section 1681t(a) preempts any state law that is "inconsistent with any provision" of the FCRA. Section 1681t(b)(1) says that "no requirement or prohibition may be imposed by any state with respect to any subject matter" enumerated subsections of § 1681t(b)(1), including subject matter enumerated in § 1681s-2(F), COVID-19 credit reporting.

[6] "Available evidence indicates that the information that credit-reporting agencies maintain on the credit-related experiences of consumers, and the credit history scoring models derived from these experiences, have substantially improved the overall quality of credit decisions and have reduced the costs of such decision-making." *Credit Reporting Accuracy and Access to Credit, Federal Reserve Bulletin, Summer 2004, 320; See also, An Overview of Consumer Data and Consumer Reporting, Federal Reserve Bulletin, Feb. 2003, 70 (citations omitted).*

[7] *See, e.g.,* Fed. Trade Comm., *Credit-Based Insurance Scores: Impacts on Consumers of Automobile Insurance*, 2007.

[8] *See, e.g.,* Morris, Darcy Steeg, Daniel Schwarcz, Joshua C. Teitelbaum, *Do Credit-Based Insurance Scores Proxy for Income in Proxy for Income in Predicting Auto Claim Risk?*, Georgetown Univ. Law Ctr., April 25, 2017.

important indicator of risk. The removal of this risk indicator may mean that many more consumers in Colorado are at risk of having their insurance rates rise.[9]

B. The Draft Proposed Bulletin is vague as to the meaning of "adverse credit information" and "related to the COVID-19 emergency

The Draft Proposed Bulletin would prevent property and casualty insurers from using "any adverse credit information that is related to the COVID-19 emergency…" It is not clear what the Division means when it addresses "adverse credit information." There is no guidance whether, for example, adverse information include a consumer who is making partial payments, or a consumer who used to pay 100% of their monthly credit card payments and is now paying 75%. The Draft Proposed Bulletin is also vague as to the meaning of "related to the COVID-19 emergency." There is no guidance whether, for example a consumer is paying less towards their debts to keep more money in savings, even though the consumer did not see an income reduction.

C. The Draft Proposed Bulletin, by lumping all collection activity as the same, may create an operational impossibility to assess risk

The proposal expands the C.R.S. Sec. 10-4-116 exemptions so that insurers must exempt a list of "extraordinary life events related to the COVID-19 emergency from the credit-based insurance score" including "[c]ollection activity related to late payments." While credit bureaus can differentiate from a few different types of collections, and they do not include medical collections,[10] the bureaus cannot interpret collection activity related to COVID-19. The result of the Draft Proposed Bulletin could mean that no collection account is included in a CBIS, which, as discussed above, greatly reduces an insurer's ability to price risk and that, in turn, could lead to higher insurance costs for all Colorado consumers.

5. An alternative approach

Rather than create a new bulletin with significant legal and operational challenges, the Division should look towards rules that have been well-established for consumer protection. CDIA encourages the Division to consider the Extraordinary Life Circumstances contained in § 6 of the Model Act Regarding Use of Credit Information in Personal Insurance ("Model Act"). This model was promulgated by National Conference of Insurance Legislators ("NCOIL"), first in November 2002,

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[9] "[C]redit information saves consumers anywhere from 30 percent to 59 percent on their car insurance (with some carriers providing up to 80 percent of their policyholders with a discount)," *Insurance scoring saves consumers money*, Am. Property Casualty Ins. Assn., 2019, http://www.pciaa.net/docs/default-source/default-document-library/insurance_scoring_overview.pdf?sfvrsn=2 (citations omitted).

[10] The nationwide credit bureaus have consumer-forward approaches to both unpaid and paid medical debt. *Unpaid medical debt* does not go on a credit report unless it's 180 days past due or longer. This grace period allows consumers six months to resolve any insurance or billing disputes or to work out a repayment agreement with the medical provider. For *paid medical debt*, the nationwide credit bureaus will remove from credit reports, previously reported medical collections that have been or are being paid by insurance.

readopted in November 2005, amended in July 2009, and readopted again in November 2015. The Extraordinary Life Circumstances were put forward during prior national financial hardship and they are well-suited for the crisis today. Under the Extraordinary Life Circumstances of the Model Act,

> ...[A] insurer that uses credit information shall, on written request from an applicant for insurance coverage or an insured, provide reasonable exceptions to the insurer's rates, rating classifications, company or tier placement, or underwriting rules or guidelines for a consumer who has experienced and whose credit information has been directly influenced by any of the following events:
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> 1. Catastrophic event, as declared by the federal or state government
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> 2. Serious illness or injury, or serious illness or injury to an immediate family member
>
> 6. Temporary loss of employment for a period of 3 months or more, if it results from involuntary termination
>
> ...
>
> 8. Other events, as determined by the insurer

Model Act § 6.A.[11]

6. Conclusion

We appreciate the critical need to help consumers through the public health crisis, that has turned in to a financial crisis, but the Draft Proposed Bulletin, while well-intentioned to attempt to serve consumers, could hurt the very consumers the proposal is trying to protect by eliminating predictive, reliable information. There are several legal and operational problems with the Proposed Draft Bulletin that have been outlined in this comment. We would welcome a chance to meet with the Division to find places of agreement that will maintain a safe, sound insurance risk management process, balanced with the needs of consumers to be protected in this unprecedented time.

Respectfully submitted,

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[11] NCOIL Model Act.