Received via email from Birny Birnbaum
Friday, September 18, 2009 10:03 AM
To: Kim Holland; McRaith, Michael
Subject: Credit Scoring Modelers as Advisory Organizations

Commissioners Holland and McRaith,

The Center for Economic Justice (CEJ) offers the following in response to the request for comments on whether insurance scoring modelers should be regulated as advisory organizations.

Advisory organizations, also called rating organizations or rate service organizations, have historically been regulated because they provide a mechanism for collaborative ratemaking among insurers. The prototype advisory organization is the Insurance Services Office, which, among other things, collects data from insurers, analyzes those data and publishes, for use by subscribers, ratemaking information. The subscribers then use or adopt the "advisory" loss costs and rating manual. In the case of ISO, subscribers adopt rating manuals -- including risk classifications and rating factor relativities -- as well as overall expected loss costs.

Regulation of advisory organizations is necessary because the activities involve collusion on pricing -- through the vehicle of the advisory organization.

There are two obvious conclusions to be drawn from a review of the various statutes regarding advisory organizations. First, it is clear that insurance scoring modelers, as well as other third-providers of information used in pricing or claims settlement such as catastrophe modelers and claims payment modelers, carry out the activities of advisory organizations. Insurance scoring modelers collect information from insurers, combine it with consumer credit information and provide pricing tools to subscribers. There is no functional difference between the activities of FICO or TransUnion in their insurance scoring model practices and ISO in its loss cost and rating manual practices.

Second, the statutes governing advisory organizations are outdated and reflect long-abandoned historical practices related to insurer ownership of advisory organizations.

It is obvious that insurance scoring modelers are acting as advisory organizations and should be regulated as such, but CEJ asks why has this become the focus of the NAIC's action regarding insurance credit scoring? In most states, the credit scoring models of third-party vendors must be filed with the Department and are subject to review by the regulator. The question arises, what regulatory oversight do regulators want to do that is not being done because the insurance scoring modelers are not licensed as advisory organizations?

CEJ is profoundly disappointed that the NAIC continues to do nothing to address the problems of insurance scoring. We do not understand why regulators refuse to at least specify substantive and detailed data collection of insurer market performance -- including applications -- to obtain independent and reliable information about the impacts of insurance scoring, education, occupation and other questionable risk classifications on insurance availability and affordability. The regulators' steadfast refusal to collect data and acquiescence to NCOIL and insurers on insurance scoring and risk classification issues is an abdication of regulatory responsibility.

We continue to urge the NAIC to take action on insurance scoring -- the problem for consumers remains urgent. Foreclosures have risen to new records with nearly ten million foreclosures over the past several years. Unemployment continues at extremely high levels with associated high levels of late payments and delinquencies. We continue to urge the NAIC to work with member states to push a moratorium on insurance credit scoring. NCOIL recently adopted a life events provision in its credit scoring model. Putting aside the fact that the provision will not result in any substantial consumer benefit, the provisions will not be enacted until next year at the earliest in some states and until 2011 in other states.

We also urge the NAIC to develop a data call for states to use as soon as possible to collect data from insurers about the impact of credit scoring on insurance availability and affordability. Such a data call requires application level data so regulators can independently determine the impact of current economic conditions on insurance scores and insurance availability and affordability. In contrast to a survey of risk classifications, the detailed data call would provide regulators with information that regulators do not currently have.

Thanks for your consideration,

Birny Birnbaum

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