



Comments of the Center for Economic Justice

To the NAIC Market Analysis Procedures Working Group

May 2, 2017

CEJ submits the following comments regarding the Health MCAS (2018 Data Year) and the addition of Credit Life as a MCAS Line.

Credit Life

We have previously responded to the objections from CCIA, so we now respond to comments from other stakeholders.

Three states have indicated opposition to adding Credit Life as a MCAS Line. Respectfully, the rationales offered by the states indicate a lack of understanding of the product and the value and efficiency of MCAS data for market analysis.

MCAS reporting is most relevant and most valuable to regulators for the smaller lines of insurance which would otherwise not get routine review by regulators. While the state commenters suggest a “case-by-case” approach in lieu of MCAS reporting, that is not the actual choice. The choice is between routine market monitoring of Credit Life and no monitoring. Unlike other larger lines of business which receive regulatory scrutiny regardless of MCAS reporting, MCAS reporting for Credit Life means routine and efficient market monitoring instead of either no monitoring or monitoring in the event of a major market problem surfaced via newspaper reporting or consumer complaints.

Another theme in the state comments is that problems can be addressed on a case-by-case basis. This turns the concept of MCAS on its head. If complaints were sufficient indicators of market problems or the lack of market problems, there would be no need for MCAS. Complaints are clearly inadequate indicators of market performance and consumer market outcomes and particularly for Credit Life for which complaints, if they are made, are more likely to go to the lender than to the insurer. The proposal to address problems on a case-by-case basis is based on the idea that the regulator will become aware of a problem in the absence of MCAS. But the entire purpose of MCAS is to provide regulators with a critical tool for market analysis to proactively monitor markets with more reliable data than consumer complaints.

We feel compelled to add at this point that credit life is sold in a reverse-competitive market in which consumers are particularly vulnerable to unfair and abusive sales practices. Consequently, any assumption that there are no problems in the Credit Life market is unwarranted.

It is also necessary to point out that MCAS reporting is not a response to problems in a market, but a tool for regulators to more efficiently monitor markets and companies. With Credit Life in particular, MCAS reporting will allow for efficient and inexpensive routine monitoring of a line of insurance with a history of problems. Regulators will receive annual scorecards and other analyses to quickly scan the Credit Life market.

Our final preliminary comment is that in an era of Big Data, MCAS is a regulatory tool to better utilize data to improve the efficiency and effectiveness of market monitoring and market analysis. It is a contradiction to claim your state supports MCAS but opposes MCAS for a particular line. A state may prefer prioritizing development of MCAS reporting of one line over another, but opposition to a Credit Life MCAS is a rejection of MCAS, not a prioritization. Opposition to an MCAS for Credit Life is a statement of intent not to monitor the Credit Life market, but to wait for problems to be brought to regulators' attention by third parties.

We now turn to the specific comments. Pennsylvania submitted the following:

Regarding Credit Life, Pennsylvania only has \$93.4 million in premium for 46 companies in 2015 with complaint indices reflecting 0s for the past 3 years. There was a time years ago where there was an issue with Credit Life regarding negative roll-on. That is where businesses were tacking on credit life policies on financed merchandise with store credit line on merchandise such as appliances, auto mobiles, etc. un-beknownst to the consumer. This was an isolated incident. There was no formal investigation but corrective action was taken. In my opinion, at this point, Credit Life issues are handled on a case by case basis via a consumer complaint through our Bureau of Consumer Service. If there are regulators out there that feel that this is a hot button topic, they could tack on a Credit Life checklist to their Market Conduct exams while visiting a company. I don't understand how the MCAS process would capture data that would foresee potential problems in Credit Life. At this point I see no need to have Credit Life in the MCAS project. I could let you know of our MCAS process via separate correspondence if you like.

Pennsylvania's suggestion to rely on consumer complaints instead of routine market monitoring and analysis is inconsistent with the intent and purpose of MCAS, as discussed above.

Adding a Credit Life checklist to Market Conduct exams as an alternative to MCAS has two problems. First, it presupposes knowledge of a problem when the purpose of MCAS is to help identify market problems or problem companies and, second, the purpose of MCAS is to avoid using market conduct exams to identify problems instead of focused examination of problems.

A Credit Life MCAS would empower market analysts as it does for any other line of business. A large number of cancellations may indicate unwanted sales. A high number of claim denials may indicate unfair claims settlement practices or deceptive sales. A Credit Life MCAS will enable regulators to routinely and efficiently review Credit Life market outcomes.

Nebraska submitted the following:

In discussing this with members of my staff, they are not sure what they would use this particular data set for with regard to this particular product. In the end, because there is very little underwriting and the product distribution is small my staff believed that if there were any issues, they could be handled more on a case by case basis with very specific data requests . . . and moreover the complaint have been rare regarding this product. Frankly, I do have a concern is that it would create a significant expense for the Department to analyze the data.

Nebraska presents the “Credit Life is a small line” and “We’ll handle it on a case-by-case basis” rationales, which we addressed above – MCAS is more valuable for smaller lines of business than larger lines and the “case-by-case” concept is a euphemism for refusing to routinely monitor a historically problematic line of business. We are surprised by the comment that MCAS reporting will “create a significant expense for the Department to analyze the data.” The purpose of MCAS is to provide regulators with an efficient method of monitoring markets. Review of MCAS data is only an added expense in comparison to no monitoring of the Credit Life market.

Michigan submitted the following:

We understand that credit life products are largely sold as a group product. The current MCAS data pertains to products sold in the individual market. When considering adding new information to the MCAS we must consider whether the data will produce meaningful information that will contribute to our market conduct program. As a part of our consideration, we have reviewed premium and complaint data for our state pertaining to credit life products and do not see a pattern of consumer complaint activity. At this time, we believe our market conduct resources are best utilized focusing on existing data reported on the MCAS and in areas where we have identified consumer complaint patterns.

Michigan continues to support the collection of data via the MCAS, however, we do not support the proposed addition of credit life.

Michigan argues that Credit Life is not a candidate for MCAS because credit life products are sold as group policies. At best, this is a limited understanding of Credit Life products and markets. Credit Life is a group policy issued to a creditor, who, as a licensed producer, sells credit life insurance as individual certificates to individual borrowers from the group policy. Credit life is sold to individual borrowers and not sold to groups, like employers. It is this reverse-competitive market that has resulted in the numerous problems with Credit Life in the past.

We have previously discussed the comments on complaints – complaints are not a substitute for MCAS and the absence of complaints – particularly in the Credit Life line – are not reliable indicators of the absence of market problems.

We have reviewed the ACLI comments and they offer nothing new. Rather, they regurgitate the claims made by CCIA.

We urge the MAP working group to accept Credit Life as a new MCAS line. MCAS is particularly well-suited to and efficient for a smaller line of business. Opponents' arguments rest on misunderstandings of either the Credit Life line of business or the role of MCAS in market analysis. At the end of the day, a refusal to add MCAS for Credit Life at this time is a refusal to routinely monitor a problematic line of business.

Draft Health MCAS for 2018 Data Year

We offer the following in response to the AHIP/BCBS (“Industry”) comments.

Industry's first argument is that the Health MCAS has more data elements than other MCAS lines and, consequently, is much more complex. While industry frequently trots out this chestnut to suggest a greater burden on health insurers than other insurers, the suggestion is incorrect. The reporting of any MCAS line requires the development of a program / report instructions for an insurers' data system to translate the insurers' detailed data into the data buckets required by MCAS. The health MCAS is no different from other MCAS lines in this regard. Further, the actual number of substantive data elements is not nearly as great as industry suggests. Rather, health MCAS simply breaks a specific data element into reporting by coverage. In this regard, it is no different from, say, personal auto, which has nine coverages. The bottom line is that industry's ongoing references to the "complexity" of the health MCAS are not indicative of the burden on insurers or relevant to the discussion of the need to add new data elements or break existing data elements into more detail to improve regulators' ability to utilize MCAS for efficient and effective market analysis.

Industry's second comment is that any additions for the second year reporting of the health MCAS are premature until first year reporting has been reviewed. While this comment might have merit if the proposals were to change first year reporting data elements or definitions, that is not the case here. Rather, the second year changes are additional data items that regulators and consumer stakeholders always anticipated for inclusion in the health MCAS but delayed for a year. Industry is engaged in a bait and switch -- industry was happy to delay reporting of the new and important data elements until the second year when first year reporting was discussed, but now that second year reporting is up for adoption, industry switches to an alternative excuse.

The industry comments include a request to regulators to revisit the concept of MCAS:

Finally, we recommend that MAP should undertake a detailed analysis of how the entire set of Health MCAS Data will be used by state market analysts, and whether filed information will be statistically and compositionally valid for use by market analysts and worthy of the administrative burden that it will be place on filing entities along with the regulatory burden this reporting will place on the NAIC and on state regulators.

Industry is requesting a cost-benefit analysis of the health MCAS. This request should be rejected as not germane to the issues at hand. The NAIC and its members decided over a decade ago that market analysis was a more cost-effective approach to market regulation and that MCAS was essential for such market analysis. The issue of whether MCAS is cost-effective has been decided and no purpose is served by revisiting this issue. Industry's comment is purposely vague since it is intended to send regulators on a rabbit trail. If industry does not believe MCAS data will be "statistically or compositionally valid," they could explain these concepts and demonstrate their point. But, industry chose not to do so. We urge regulators to reject yet another in a long line of demands by industry intended to slow or block the implementation of a data reporting tool essential for regulators to carry out their responsibility to hold industry accountable for their treatment of consumers.