

Comments on Life Insurance Travel Underwriting Proposal
Center for Economic Justice
November 27, 2006:

The Center for Economic Justice appreciates the working group's effort to address unfair risk classifications in life insurance. However, the proposed language provides no substantive consumer protection and will have the effect of legitimizing insurers' current unfair practices. We therefore propose modifications to the language to create meaningful consumer protections. We offer a section-by-section discussion followed by redlined version of the text to reflect the discussion.

Section 2 prohibits the use of past lawful travel as a basis for underwriting life insurance only when past lawful travel experience is the sole basis for the underwriting decision. Insurers should not be able to use past lawful travel in any way to condition the sale or price of life insurance. First, there is no basis to support such underwriting or rating decision on past lawful activities. Second, there can be no assumption that past lawful activities are indications of future activities.

In practice, the "sole" use prohibition has no effect on insurer behavior because insurers always employ a number of underwriting guidelines to determine eligibility. Sole use could allow, for example, the unfettered use of past lawful travel as an underwriting guideline in 99.99% of all consumer applications. As we have seen with the sole use prohibition with credit scoring, a prohibition based on sole use is not a substantive consumer protection. A sole use prohibition is a pretend consumer protection that allows insurers to continue existing practices. The qualifier must be "in whole or in part" for the prohibition to have any substantive consumer protection.

The protection against unfair discrimination based on past lawful travel should also include rating based on this characteristic as well as underwriting. An insurer could technically comply with the section 2 prohibition – even with the sole use replaced by in whole or in part – while effectively discriminating against a consumer for past lawful travel by simply charging a much higher rate that makes the life insurance either unaffordable or non-competitive.

(2) Refusing life insurance to, refusing to continue a life insurance of, ~~or~~ limiting the amount, extent or kind of life insurance coverage available to an individual, or determining the premium of life insurance based in whole or in part solely on the individual's past lawful travel experiences.

Even if we assume that future travel plans are a legitimate basis for underwriting or rating life insurance, the conditions for such use must be substantive. Consequently, the lead-in section 3a should have the same provisions as section 2 – prohibiting rating as well as underwriting and making the prohibition in whole or in part. As with section 2, the proposed language in Section 3a provides no substantive consumer protection.

We also suggest revising the actuarial test for use of future travel plans. Section 3a(i) calls for a separate class of individuals who travel. The determinant of any travel-related risk classification should be the mortality risk associated with the travel destination as separate and greater from the mortality risk of the individual's permanent residential location. As proposed – “individuals who travel” – is not tied to a specific travel location, but could be aggregated across many individuals with a variety of travel destinations.

In section 3a(ii), we recommend deletion of the second phrase regarding reasonably anticipated experience for two reasons. First, actuarial principles – the condition in the first phrase – covers the type of experience necessary to support underwriting or rating based on differences in mortality risk. Second, actuarial principles already provide actuaries with excessive opportunity for unsupported judgments; the proposed language should not encourage the type of unsupported conjecture claimed as sufficient basis for actuarial justification found in the American Academy of Actuaries testimony of September 2006 before the Travel to Foreign Countries Working Group.

Section 3c is inconsistent with market regulation reforms which call for market conduct examinations to be based upon market analysis and which promote targeted market conduct exams limited to problems identified through market analysis. Further, the analysis of the reasonableness of travel underwriting and rating should be done up front to ensure that consumers are not harmed by illegal and unfair practices. The proposed language would fail to stop such practices until after consumers are harmed and such harm can be irreparable – a consumer who is unfairly denied coverage because of future travel plans and who dies while traveling is unable to obtain any relief following a market conduct exam that determines the denial of coverage was illegal.

(3) (a) Refusing life insurance to, refusing to continue life insurance to, ~~or~~ limiting the amount, extent or kind of life insurance available to an individual, or determining the premium of life insurance based in whole or in part solely on the individual's future lawful travel plans unless:

(i) The mortality risk associated with travel to a specific location is demonstrably different from the mortality risk of the individual's permanent residential location ~~Individuals who travel are a separate actuarially supportable class whose risk of loss is different from those individuals who do not travel; and~~

(ii) Such risk classification is based upon sound actuarial principles ~~and actual or reasonably anticipated experience that correlates to the risk of travel to a specific destination.~~

(b) The commissioner may adopt regulations necessary to implement the provisions of this paragraph and may provide for limited exceptions that are based upon national or international emergency conditions that affect the public health, safety, and welfare and that are consistent with public policy.

(c) An insurer intending to use an individual's future travel plans for underwriting or rating life insurance shall file with the commissioner on or before such use a complete description of any underwriting guidelines or rating plans based in whole or in part on an individual's future travel plans and the supporting actuarial analysis required by section 3a. ~~Each market conduct examination of a life insurer conducted pursuant to [insert reference to applicable state law] shall include a review of the life insurer's implementation of this paragraph and Paragraph (2) of this subsection.~~