

Unfair or Deceptive Acts or Practices Revised Draft Rule

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INTRODUCTION

The Co-operators Group Limited (“The Co-operators”) is a leading Canadian, diversified, integrated, multi-line insurance and financial services organization. As a co-operative, our 45 members include co-operatives and credit union centrals representing a combined membership of millions of Canadians.

Our footprint in Ontario is strong: we insure approximately 704,000 private passenger vehicles, 363,200 homes, 10,200 farms and 45,000 businesses. The insurance and financial products and services provided by The Co-operators are delivered primarily through our independently contracted but exclusive financial advisor channel. We have independent distribution contracts with 247 financial advisors in the province, who operate 237 agencies in 308 locations.

We are proud to provide insurance and financial services to more than two million Canadians. We are even prouder that we provide financial security to Canadians in their communities while staying true to our co-operative values.

We appreciate the opportunity to participate in FSRA's consultation on the revised Unfair or Deceptive Acts or Practices (UDAP) draft rule.



Revised rule



We commend FSRA's consultative and responsive approach to the new UDAP rule. We were pleased to share our perspective during the initial consultation and note that a number of our recommended changes were included in the revised rule.

Our continued focus for the UDAP rule centres around fostering innovation and removing existing barriers, allowing insurers to best serve our clients.

To that end, our feedback on the revised rule is outlined below, ordered in terms of priority. Recognizing FSRA's UDAP rulemaking is a two-stage process, we urge these recommendations be considered as part of any additional revisions to the current draft rule and serve as the basis for the fully transformed principles-based UDAP rule.

Prohibited conduct in auto insurance quotations, applications or renewals

At The Co-operators, we are committed to interacting with our clients in the manner they prefer, whether it be by phone, online or in-person. In recent years, we have enhanced our digital services to provide greater client choice and access, and ongoing circumstances related to the pandemic have highlighted clients' desire and expectation that the full start-to-finish insurance process can be completed online.

In providing an **omni-channel approach**, there are certain unique circumstances where agent intervention is required to better understand the risk and/or provide additional communication. With the inclusion of section 9(1)(i) in the draft rule and only a minor wording change within the revised draft rule, it will be important for FSRA to implement a true principles-based approach, recognizing that certain variances in process are reasonable and necessary—and in the best interest of a client—and do not in and of themselves constitute a UDAP. This will be particularly necessary in light of the changes that make not only the action, but the opportunity for an action a UDAP.

Therefore, we continue to recommend section 9(1)(i) be amended to include a caveat of permissible “reasonable” variances undertaken by an insurer, with a definition of “reasonable”.

Unfair claims practices

In our first submission, we shared concern with the new language used within this section of the draft rule given its openness for interpretation. We are pleased to see the inclusion of “adjudication” in section 5(1), which has strengthened the rules specific to claims.

While we recognize the revised wording that has been made in sub-section 5(1)(vi), **we continue to believe this sub-section should be removed from the UDAP rule**, particularly now that section 5(1) adds clarity around adjudication, making sub-section 5(1)(vi) redundant.

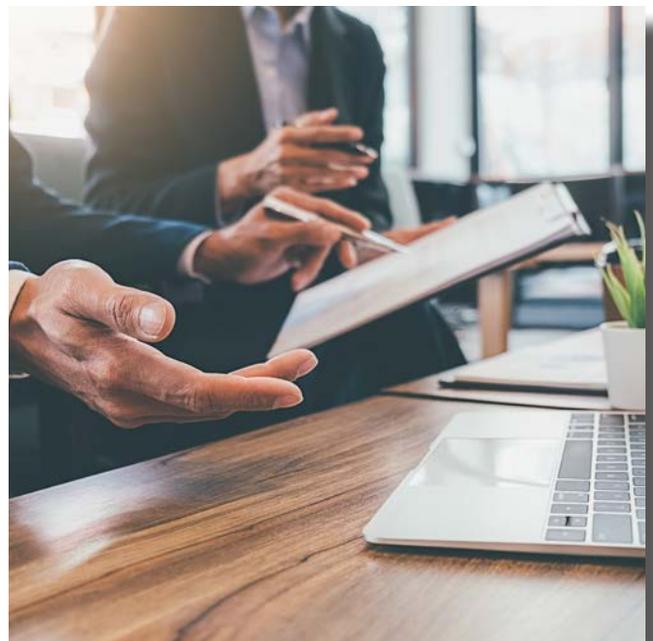
We are committed to putting the client at the centre of our decision making and ensuring access to care and services that will help them return to their pre-accident state. For this reason, we do not believe there is such a thing as “simple” claims handling as each individual and their claim is unique. Moreover, a question still remains on how insurers will be measured against the broad standard of “fair, simple and accessible claims handling procedures”. As the *Insurance Act* already compels insurers to settle in an expeditious manner and has penalties for non-compliance, we do not feel these broad changes are necessary given their added complexity.

Therefore, we strongly recommend FSRA remove sub-section 5(1)(vi) from the UDAP rule in acknowledgment of the complexity and individual client focus involved in the claims handling process, and the regulatory duplication both within the rule itself and with the Act.

Misrepresentation

We are pleased to see our recommendation of including section 8(2) in the revised rule has been incorporated to better preserve the intent within the current regulation.

Given the role of insurance agents and their responsibility to provide insurance-related advice on wide-ranging topics from individual coverage needs to the claims process, we remain concerned about the addition of “advice” within the UDAP rule. This concern is compounded by references to “inappropriate” and “inaccurate” that are not defined, and are in fact difficult to define given the subjective nature of this potential UDAP. We would also note that by including “advice” in the UDAP rule, consideration must be given to situations where advice should have been presented to a client but was not. While we understand the intent behind the changes to this section, the language and scope is incredibly broad, so we **encourage further review and clarity in advance of the release of the rule.**



Interpretation

We are pleased to see “authorized representative” is now being used in place of “legal representative”. However, we remain very concerned that section 1(4) expands liability to employees and authorized representatives. This broadened scope of liability transfers responsibility to those who may have limited control, which we do not feel is appropriate. **We strongly recommend against this change.** As directors and officers are already liable for UDAP contraventions under the Act, we continue to believe section 1(4) can be removed from the rule entirely.

Credit information as a prohibited factor

We support a risk-based approach to rating where rates charged are proportionate to risk. We believe this supports fairness, innovation and road safety.

Over the years, UDAP has directly restricted our innovation potential by prohibiting the use of credit score and other rating variables. Credit score is an indicator that is predictive of risk, and its use in other jurisdictions improves insurers’ segmentation, allowing insurers to allocate costs more fairly through premiums that are commensurate with risk and therefore reduce rate subsidization.

The draft rule does not facilitate any new opportunities for innovation with respect to credit score/credit information, and in fact, has strengthened the prohibition to apply to all stages of the auto insurance process and made it a UDAP to ask a person to provide consent for credit information aside from situations of establishing a monthly payment plan. This stands in contrast to the government’s commitment in the 2019 budget to allow drivers the choice to lower their premiums by allowing insurers to consider their credit history.

We continue to recommend the Ministry of Finance and FSRA implement this budget commitment as soon as possible to allow for greater consumer choice.

We also note that the prohibition in UDAP is layered on top of the prohibitions in sections 5 and 16 of the Automobile Insurance Regulation (“Regulation 664”), which prohibit the use of credit history, credit rating, and other financial factors as an element in a risk classification system or in making a decision whether to issue, renew or terminate an automobile policy. **We urge FSRA to advocate that the Ministry of Finance remove the credit information/credit score prohibitions contained in Regulation 664.** Failing this, we urge FSRA to remove the prohibitions relating to credit score from the final UDAP rule, such that the industry is solely regulated by the restrictions contained in Regulation 664. This would bring Ontario in line with other jurisdictions.





CONCLUDING REMARKS

Once again, we appreciate the opportunity to provide feedback on the revised draft Unfair or Deceptive Acts or Practices Rule. We commend FSRA's commitment to consultation and welcome continued discussion throughout the transition phase and second stage of the rulemaking process.

We are not a member of the Insurance Bureau of Canada (IBC) and prefer to participate in the policy process directly. We are a member of the Canadian Association of Direct Relationship Insurers (CADRI) and the Canadian Life and Health Insurance Association (CLHIA), and support the feedback they have each shared directly.

If you have any questions or require clarification, please do not hesitate to contact our Associate Vice President of Government Relations, Maya Milardovic, at maya_milardovic@cooperators.ca.

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