



June 29, 2020

Commissioner Jon Godfread, Chair
Commissioner Mark V. Afable, Vice Chair
Artificial Intelligence (EX) Working Group
NAIC Central Office
1100 Walnut, Suite 1500
Kansas City, MO 64106-2197

Attn: Denise Matthews, Director, Data Coordination and Statistical Analysis

VIA Electronic Mail: dmatthews@naic.org

RE: Draft National Association of Insurance Commissioners (NAIC) Principles on Artificial Intelligence (AI)

Dear Commissioner Godfread and Commissioner Afable:

The American Property Casualty Insurance Association (APCIA)¹ appreciates the collaborative and robust process that has gone into developing the AI Principles (Principles) and we support the mission of the Artificial Intelligence Working Group (Working Group) to establish a voluntary high-level set of guiding principles to encourage organizations to have honest and open conversations around AI development and use as well as to promote consistency across the NAIC committee structure. However, as we near the end of the Working Group's process, a proposal to add the term "proxy discrimination" to the "Fair and Ethical" section of the Principles raises concerns for APCIA.

The insurance industry is fully committed to diversity, inclusion, and the fair treatment of all consumers. We are of one accord with state regulators in support for strict enforcement of anti-discrimination laws and practices that make insurance more affordable and accessible.

For purposes of the current discussion, our concern with the term "proxy discrimination" is that it is an undefined and evolving legal theory that is not appropriate for a high-level guidance document and is redundant based on existing statements throughout the Principles.

High-Level Document Without Definitions

APCIA has continuously urged the Working Group to define certain terms such as "AI Actors," "Artificial Intelligence," and "AI lifecycle." The purpose for these requests is to give context and a sense of scope to the Principles. Nevertheless, APCIA respects that the Working Group wants to avoid debates over definitions that could derail the momentum of this project.

¹ Representing nearly 60 percent of the U.S. property casualty insurance market, the American Property Casualty Insurance Association (APCIA) promotes and protects the viability of private competition for the benefit of consumers and insurers. APCIA represents the broadest cross-section of home, auto, and business insurers of any national trade association. APCIA members represent all sizes, structures, and regions, protecting families, communities, and businesses in the U.S. and across the globe.

Nevertheless, the proposal before the Working Group is to add a term to the document that is meaningless and inconsistent without definition. Unlike the terms that APCIA has sought definitions for to add context and scope, “proxy discrimination” promotes a new legal standard. Further, it is a term without any common meaning - rather, it has different meanings for different regulators and different stakeholders and most certainly is one that will continue to evolve over time. Since, the working group has concluded that definitions are not necessary, “proxy discrimination” should not be included.

APCIA respectfully urges the Working Group to maintain its objective of high-level guidance and avoid including the term “proxy discrimination” in these Principles.

Guidance Should Not Legitimize New Untested Legal Theories

State insurance codes and actuarial principles affirmatively permit risk-based pricing. Insurance regulation in every state, including the District of Columbia, is designed to create and sustain healthy insurance markets by prohibiting rates that are “excessive, inadequate or unfairly discriminatory.” This is a long-established and well understood legal framework. At the same time, APCIA recognizes that some Working Group members have expressed the need for the Principles to communicate to regulators and NAIC Committees the need to consider potential discriminatory impacts. This messaging can be communicated without using untested legal theories such as “proxy discrimination.”

Also, focusing AI principles and guidance on established legal norms is consistent with other regulatory approaches. For example, a recent blog by the Federal Trade Commission (FTC) puts forth lessons on how companies can manage consumer protection risks in AI. Throughout the document, particularly when discussing fair decision making, the guidance references the Equal Credit Opportunity Act and Fair Credit Reporting Act as guideposts. Additionally, the lessons also refer to “illegal discrimination.”

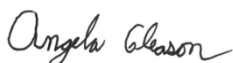
The Working Group should stay true to the fundamental statutory framework that guides insurance regulator’s assessment of risk in a manner that protects consumers and insurer solvency. Any change in the efficacy of the current legal framework, which the use of “proxy discrimination” perpetuates, should take place through robust, purposeful, and well-researched dialogue by all stakeholders.

Redundancy

APCIA also believes a reference to proxy discrimination is not necessary. The concept of unlawful discrimination is addressed in various ways throughout the document. For instance, there are multiple references to unfair discrimination; AI actors are encouraged to engage proactively in responsible stewardship, and be responsible for the creation, implementation and impacts of any AI system, even if the impacts are unintended; and it recommends that AI actors apply systemic risk management to each phase of the lifecycle to address risks related to AI systems, including unfair discrimination. These are just a few examples of language used in the guidance that would provide caution to regulators and industry to be mindful of all forms of prohibited discrimination.

For all the reasons stated above, APCIA urges the working group to avoid incorporating the term “proxy discrimination” into the Principles. Thank you for your consideration of these comments please let us know if we can answer any questions or be of assistance.

Respectfully submitted,



Angela Gleason