AMERICAN ACADEMY *of* ACTUARIES

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May 14, 2021

Honorable David Altmaier, Co-Chair
Honorable Dean L. Cameron, Co-Chair
Special (EX) Committee on Race and Insurance
National Association of Insurance Commissioners

Dear Commissioner Altmaier and Director Cameron:

On behalf of the American Academy of Actuaries,[1] I would like to offer additional input on the National Association of Insurance Commissioners' (NAIC's) Special (EX) Committee on Race and Insurance 2021 Proposed Charges. This is in addition to the general comments provided prior to the Spring National Meeting. The Academy continues to support the special committee's efforts pertaining to diversity and inclusion concerns in insurance coverages and in particular to identify and address unfair discrimination.

The following comments relate to **Workstream Three**, **property/casualty**. In the Academy Casualty Practice Council (CPC) November 12 comments to the special committee's Workstream Three, the CPC identified actuarial considerations related to unfair discrimination, including actuarial guidance such as the standard on *Risk Classification* (ASOP No. 12), data quality considerations, disparate impact analysis, and use of socioeconomic factors in auto insurance. We are pleased to see many of these considerations included in the special committee's charges.

As the special committee endeavors to identify and address the problem of unfair discrimination, a crucial step in any problem-solving exercise is to ensure that unfair discrimination is identified and defined. In charge F, we believe the opening prompt may imply that only proxy discrimination and disparate impact are to be defined. While these terms are important to understand, we believe an equally, if not more important, task is to identify and define unfair discrimination including consideration of disparate treatment. To ensure that unfair discrimination is included as a defined term and to specifically include disparate treatment within this charge, we suggest the following rewording in redline:

> Charge F: "Continue research and analysis of insurance, legal, and regulatory ~~approaches to addressing~~ methods of identifying unfair discrimination, ~~specifically~~ proxy discrimination, disparate treatment, and disparate impact, by defining these terms and determining appropriate steps to address…"

[1] The American Academy of Actuaries is a 19,500-member professional association whose mission is to serve the public and the U.S. actuarial profession. For more than 50 years, the Academy has assisted public policymakers on all levels by providing leadership, objective expertise, and actuarial advice on risk and financial security issues. The Academy also sets qualification, practice, and professionalism standards for actuaries in the United States.

In addition, we believe charge *F-2*

> *(Workstream Three) Developing analytical and regulatory tools to assist state insurance regulators in determining unfair discrimination including issues related to:*

a. The use of socioeconomic variables.
b. Identifying proxy variables for race.
c. Correlation vs. causation.
d. Disparate impact considerations.
e. Use of third-party data.
f. Appropriateness of data such as criminal history.

could benefit from additional and modified language to emphasize that Workstream Three should also define, identify, and address unfair discrimination, and specifically reference property/casualty insurance issues that are the focus of Workstream Three. We also believe that any tools developed should focus on whether unfair discrimination is identified in the selection of risk classes or in the resulting rates by separately considering the inputs and outputs in the rating and underwriting process. Finally, we suggest reorganizing and combining some of the listed issues to help better frame the potential considerations related to unfair discrimination. The following is our suggestion for revising charge F-2 that reflects the above comments (without redline for ease of readability):

> Charge F-2 *(Revised)*: (Workstream Three) Developing analytical and regulatory tools to assist state insurance regulators in defining, identifying, and addressing unfair discrimination in property/casualty insurance, including issues related to:

a. Rating and Underwriting variables used (e.g., socioeconomic variables, criminal history), including:

    i. Identifying proxy variables for race.
    ii. Correlation vs. Causation—Including concepts of spurious correlation and rational explanation.
    iii. Potential bias in underlying data.
    iv. Proper use of third-party data.

b. Disparate impact considerations.
c. Principles of cost-based pricing.

For charge G, we would suggest a more descriptive term for "resources" to better define what resources are being identified. We also suggest that the NAIC create a governance structure for the proposed database to protect privacy and prevent misuse.

The following comments relate to **Workstream Four** regarding **life insurance and annuities**:

We believe that the charges identified in *F.2* as proposed by the special committee:

> *F. Continue research and analysis of insurance, legal and regulatory approaches to addressing unfair discrimination, specifically proxy discrimination and disparate impact, by defining the terms and determining appropriate steps to address, including:*

2. (Workstream Three) Developing analytical and regulatory tools to assist state insurance regulators in determining unfair discrimination including issues related to:
a. The use of socioeconomic variables.
b. Identifying proxy variables for race.
c. Correlation vs. causation.
d. Disparate impact considerations.
e. Use of third-party data.
f. Appropriateness of data such as criminal history.

and *I.2*:

I. Direct NAIC and Center for Insurance Policy and Research (CIPR) staff to conduct necessary research and analysis, including: 2. (Workstream Three) The availability of producer licensing exams in foreign languages, steps exam vendors have taken to mitigate cultural bias, and the number and locations of producers by company compared to demographics in the same area.

would both also be appropriate for Workstream Four.

While we are supportive of the charges identified in *H.2*:

H. Continue research and analysis related to insurance access and affordability issues, including: 2. (Workstream Four) Disparities in the number of cancellations/rescissions among minority policyholders.

we note that they may be difficult to accomplish before the charges identified in G:

G. (Workstreams Three, Four and Five) Consider enhanced data reporting and record-keeping requirements across product lines to identify race and other sociodemographic factors of insureds. Consider a data call to identify resources and products sold in specific ZIP codes to identify barriers to access.

have been completed.

On behalf of the American Academy of Actuaries, I again appreciate your attention to our comments and hope to continue to work with you as you address diversity, equity and inclusion concerns going forward. If you have any questions regarding these comments that you would like to discuss, please feel free to contact me or Craig Hanna, the Academy's director of public policy, at hanna@actuary.org.

Sincerely,

Thomas A. Campbell, MAAA, FSA, CERA
President
American Academy of Actuaries

Cc: Andrew J. Beal, Michael F. Consedine, Kay Noonan

ACLI
Financial Security for Life

Paul Graham
Senior Vice President, Policy Development

May 14, 2021

Mr. David Altmaier
Co-Chair, NAIC Special (EX) Committee on Insurance and Race

Mr. Dean Cameron
Co-Chair, NAIC Special (EX) Committee on Insurance and Race

Mr. Raymond Farmer
Chair Emeritus NAIC Special (EX) Committee on Insurance and Race

Mr. Andrew Mais
Co-Vice Chair, NAIC Special (EX) Committee on Insurance and Race

Ms. Chlora Lindley-Myers
Co-Vice Chair, NAIC Special (EX) Committee on Insurance and Race

Re: NAIC Special (EX) Committee on Insurance and Race 2021 Proposed Charges

Dear Messrs. Altmaier and Cameron et al:

The American Council of Life Insurers ("ACLI") appreciates the opportunity to provide comments on the NAIC Special (EX) Committee on Insurance and Race ("Special Committee") 2021 proposed charges. We are aligned with a goal to help address systemic inequalities, and we are encouraged by the discussions taking place at the NAIC to address this critical societal issue. ACLI is committed to working with the NAIC at all levels to address concerns of fairness and improve accessibility of insurance products to all communities.

ACLI supports the spirit of the proposed charges laid out by the Special Committee. ACLI would recommend the inclusion of charges to the Life Actuarial (A) Task Force ("LATF") and the Health Actuarial (B) Task Force ("HATF") that would ensure that LATF and HATF are involved in actuarial and risk classification issues emanating from any Special Committee on Race and Insurance work streams related to life insurance and health insurance, respectively.

We look forward to continued dialogue on the development of the Special Committee charges and appreciate regulators consideration of our comments.

Sincerely,

cc: Andrew J. Beal, NAIC
Michael F. Consedine, NAIC
Kay Noonan, NAIC

May 14, 2021

Commissioner David Altmaier and Director Dean L. Cameron
Co-Chairs, Special (EX) Committee on Race and Insurance
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64105

Re: Special (EX) Committee on Race and Insurance – 2021 Proposed Charges

Commissioner Altmaier and Director Cameron:

The American InsurTech Council (AITC) appreciates the opportunity to comment on the 2021 Proposed Charges to the Special (EX) Committee on Race and Insurance. AITC is the independent voice of InsurTechs in support of the development of technology-based innovation in insurance.

AITC strongly supports the Special Committee's work and other efforts by the National Association of Insurance Commissioners (NAIC) to identify and address problems related to racial bias involving insurance. We endorse the proposed charges and look forward to working with the Special Committee.

We have had an opportunity to review comments submitted by others and find ourselves in agreeing with many of the points made. Race-based discrimination and bias have no place in the business of insurance and where instances of such exist they should be addressed. We believe that this can be done without altering the commitment to the core principles of risk transfer, risk mitigation, pricing, consumer protection, and an unalterable commitment to insurer solvency that have been the foundation for state-based regulation in the U.S. for well for over a century.

Thank you again for the opportunity to comment.

Respectfully,

Scott Harrison (sharrison@americaninsurtech.com), Jack Friou (jfriou@americaninsurtech.com), The Hon. Thomas Mays (tmays@americaninsurtech.com, JP Wieske (jpwieske@americaninsurtech.com), Teri Hernandez (thernandez@americaninsurtech.com) Co-Founders, American InsurTech Council

Draft: 4/7/21

2021 Proposed Charges

SPECIAL (EX) COMMITTEE ON RACE AND INSURANCE

The **Special (EX) Committee on Race and Insurance** will:

A. Serve as the NAIC's coordinating body on issues related to (i) diversity and inclusion within the insurance sector; (ii) race, diversity, and inclusion in access to the insurance sector and insurance products; and (iii) practices within the insurance sector that ~~potentially~~ disadvantage people of color and/or historically underrepresented groups.

B. Coordinate with existing groups such as the Big Data and Artificial Intelligence (EX) Working Group and the Casualty Actuarial and Statistical (C) Task Force on work related to people of color and/or historically underrepresented groups. ~~and encourage those groups to continue their work in predictive modeling, price algorithms and artificial intelligence (AI), with a particular focus on how race is impacted.~~

C. (Workstream One) Continue research and analysis to develop specific recommendations on action steps that state insurance regulators and companies can take to improve the level of diversity and inclusion in the industry, including:

1. Seek additional engagement from stakeholders to understand the efficacy of diversity-related programs, how companies measure their progress and what state insurance regulators can do to support these efforts.
2. Collect input on existing gaps in available industry diversity-related data.

D. (Workstream Two) In coordination with the Executive (EX) Committee, receive reports on NAIC diversity, equity and inclusion (DE&I) efforts. Serve as the coordinating body for state requests for assistance from the NAIC related to DE&I efforts.

E. (Workstream Two~~hree~~) Research ~~best~~ practices among state insurance departments on DE&I efforts and develop forums for sharing relevant information among states and with industry.

F. (Workstream Three and Four) Perform consumer outreach and studies to understand the tools and resources necessary to help raise awareness of the benefits of insurance and its role in economic empowerment and intergenerational wealth.

G. Research and identify opportunities for community partnerships to jointly identify and mitigate underlying loss cost drivers in minority and underrepresented communities.

~~*E.*~~

~~*F.*~~ H. (Workstream Three and Four) Continue research and analysis of insurance, legal and regulatory approaches to addressing: (a) unfair discrimination, ~~specifically~~ proxy discrimination, and disparate impact; (b) correlation; (c) third-party vendor use; (d) and variables, such as criminal history. Based on the research utilize stakeholder engagement to identify a consensus on the current legal and regulatory framework and ~~areas of improvement~~concerns to be addressed within that framework. Once consensus is reached, establish specific charges, as necessary, to identify potential solutions that match the concerns. Solutions may include developing analytical or regulatory tools or frameworks consistent with state-based regulation. ~~, by defining the terms and determining appropriate steps to address, including:~~

~~*G.* (Workstream Four) The impact of traditional life insurance underwriting on minority populations, considering the relationship between mortality risk and disparate impact.~~

~~*H.* (Workstream Three) Developing analytical and regulatory tools to assist state insurance regulators in determining unfair discrimination including issues related to:~~

~~*I.* The used of socioeconomic variables.~~

~~*J.* Identifying proxy variables for race.~~

~~*K.* Correlation vs. causation.~~

~~*L.* Disparate impact considerations.~~

~~*M.* Use of third-party data.~~

~~Appropriateness of data such as criminal history.~~

I. (Workstream (Four) Continue research and analysis on the impact of traditional life insurance underwriting on minority populations, considering the relationship between mortality risk and disparate impact.

J. (Workstreams Three, Four and Five) ~~Consider enhanced data reporting and record-keeping requirements across product lines to identify race and other sociodemographic factors of insureds.~~ Consider ~~a data call~~research mechanisms to identify ~~resources and products sold~~loss cost drivers in specific ZIP codes to ~~identify barriers to access~~benchmark opportunities for consumer outreach or community partnerships.

K. Continue research and analysis related to insurance access and affordability issues, including:

1. (Workstream Four) The marketing, distribution and access to life insurance products in minority communities, including the role that financial literacy plays.
2. (Workstream Four) Disparities in the number of cancellations/rescissions among minority policyholders.
3. (Workstream Five) Measures to advance equity through lowering the cost of health care and promoting access

to care and coverage, with specific focus on measures to remedy impacts on people of color, low income and rural populations, and historically marginalized groups, such as the LGBTQ+ community, individuals with disabilities, and Alaska Native and other Native and Indigenous people.

4. (Workstream Five) Examination of the use of network adequacy and provider directory measures (such as provider diversity, language and cultural competence) to promote equitable access to culturally competent care.
5. (Workstream Five) Conduct additional outreach to educate consumers and collect information on health and health care complaints related to discrimination and inequities in accessing care.
6. (Workstream Three) ~~Steps that can be taken to mitigate~~ Understanding the impact of residual markets, premium financing and nonstandard markets on disadvantaged groups and steps that can be taken to mitigate any identified impacts.
7. Make referrals for the development of consumer education and outreach materials as appropriate.

L. Direct NAIC and Center for Insurance Policy and Research (CIPR) staff to conduct necessary research and analysis, including:

~~1. (Workstream Three) The status of studies concerning the affordability of auto and homeowner's insurance, including a gap analysis of what has not been studied.~~

~~2.~~1. (Workstream Three) The availability of producer licensing exams in foreign languages, steps exam vendors have taken to mitigate cultural bias, and the number and locations of producers by company compared to demographics in the same area.

~~3.~~2. (Workstream Five) Aggregation of existing research on health care disparities and collection of insurance responses to the COVID-19 pandemic and its impact across demographic populations.

LIFE INSURANCE AND ANNUITIES (A) COMMITTEE – NEW CHARGES

The **Accelerated Underwriting (A) Working Group**, as part of its ongoing work to consider the use of external data and data analytics in accelerated life underwriting, will include an assessment of and recommendations, as necessary, regarding the impact of accelerated underwriting on minority populations.

HEALTH INSURANCE AND MANAGED CARE (B) COMMITTEE – NEW CHARGES

The **Health Insurance and Managed Care (B) Committee** will:

A. Respond to inquiries from the U.S. Congress (Congress), the White House and federal agencies; analyze policy implications and the effect on the states of proposed and enacted federal legislation and regulations, **including, where appropriate, an emphasis on equity considerations and the differential impact on underserved populations**; and communicate the NAIC's position through letters and testimony, when requested.

The **Mental Health Parity and Addition Equity Act (MHPAEA) (B) Working Group** of the Regulatory Framework (B) Task Force will develop model educational material for state departments of insurance (DOIs) and research disparities in and interplay between mental health parity and access to culturally competent care for people of color and other underrepresented groups.

The **Health Innovations (B) Working Group** will evaluate mechanisms to resolve disparities through improving access to care, including the efficacy of telehealth as a mechanism for addressing access issues; the use of alternative payment models and value-based payments and their impact on exacerbating or ameliorating disparities and social determinants of health; and programs to improve access to historically underserved communities.

MARKET REGULATION AND CONSUMER AFFAIRS (D) COMMITTEE – NEW CHARGES

The **Producer Licensing (D) Task Force** will receive a report from on the availability of producer licensing exams in foreign languages, the steps exam vendors have taken to mitigate cultural bias, and the number and location of producers by company compared to demographics in the area.

American Property Casualty Insurance Association
INSURING AMERICA apci.org

May 14, 2021

Commissioner David Altmaier and Director Dean L. Cameron
Co-Chairs, Special (EX) Committee on Race and Insurance
National Association of Insurance Commissioner
1100 Walnut Street, Suite 1500
Kansas City, MO 64106

Via Electronic Mail: knoonan@naic.org

RE: 2021 Proposed Charges – Special (EX) Committee on Race and Insurance

Dear Commissioner Altmaier and Director Cameron:

The American Property Casualty Insurance Association (APCIA) appreciates the opportunity to provide specific recommendations to the Special Committee (EX) on Race and Insurance's (Special Committee) proposed charges. Overall, we support the Special Committee's proposed process to promote a consistent approach to race and insurance issues by centralizing the policy work into the Special Committee with collaboration and outreach to other NAIC-related groups as needed. Nonetheless, we do have several suggested revisions to the draft proposed charges.

Attached is a mark-up of APCIA's recommended edits and below a brief explanation for our recommendations.

Proposed Charge B – Coordination w/ groups such as the AI and Big Data Working Group and CASTF

APCIA's recommended edits are intended to reflect the importance of collaboration on issues related to bias for people of color and/or historically underrepresented groups among the Special Committee, the AI and Big Data Working Group, and CASTF. These comments also seek to acknowledge that notwithstanding its singular importance, these issues are part of a much broader package of work for those NAIC groups. The APCIA recommendations seek to promote a balanced approach that recognizes that insurers are putting in processes and procedures to address the concerns being raised.

Proposed Charge E – DEI efforts among state insurance departments

Promoting DEI efforts is an equally important effort for regulators and industry. Each group is seeking to foster and build a diverse talent pipeline. As such, we recommend an amendment that would encourage identifying opportunities to share ideas in this space between industry and regulators. Additionally, APCIA recommends deleting the reference to "best" before practices only because it necessitates a follow-up question as to who defines what is "best" and removal will potentially broaden the universe of ideas that can be shared.

Proposed Charge F – Research and Analysis of Life and P/C Insurance Practices

As drafted, Charge F has predetermined the outcome of the research and analysis that it dictates. Regulators, industry, and consumers have committed to a diligent, timely, and robust examination of race and insurance issues that will provide meaningful change for all. APCIA strongly believes that to achieve this goal, we must first come to a consensus on the concerns to be addressed within the existing legal and regulatory framework.

For instance, the proposed charge includes the following phrase: ". . . unfair discrimination, *specifically* proxy discrimination, and disparate impact . . . ." (emphasis added). This phrase equates "proxy discrimination" with "disparate impact", contrary to the law of protected class discrimination which defines each term differently. "Unfair discrimination," "proxy discrimination," and "disparate impact" are all terms with longstanding statutory and legal meanings and the analytical framework for determining whether one or the other exists is very different under the law. It is critical that we have the foundational dialogue to reach consensus on the meaning of these terms, so that we are all speaking from the same page, consistent with their long-standing statutory and legal definitions.

Once consensus is reached on the existing legal and regulatory framework an analysis and prioritization of the concerns can then lead to a productive dialogue to identify and match potential solutions.

APICA's recommendations are intended to clarify the process that we believe proposed charge F intends while maintaining what regulators have generally identified as particular areas of interest for exploration.

Proposed Charge G – Enhanced Data Collection and Record Keeping Requirements of Sociodemographic Factors

Proposed charge G assumes that insurers collect sociodemographic factor data. This is not the case. Collecting this type of data raises significant legal, privacy, liability, and other public policy concerns. We recommend eliminating this charge. Alternatively, APCIA provided language to amend the charge to research loss cost drivers in specific zip codes to identify opportunities for consumer outreach or community partnerships.

Proposed New Charges – Research on Loss Cost Drivers and Economic Empowerment Initiatives

APCIA continues to stress that our core competency as an industry is enabling economic empowerment through sustainable risk transfer and risk mitigation solutions for our customers at a price that is commensurate with actual or expected losses. This means some challenges may not lend themselves to insurance-specific solutions but will require the business community, government partners, and consumer groups to collaborate on holistic approaches that allow all to reach their highest economic potential.

APCIA has offered new charges for your consideration to address these important issues.

Thank you for the opportunity to comment. APCIA looks forward to continued collaboration and we stand ready to answer any questions that you may have.

Sincerely,

Angela Gleason

America's Health Insurance Plans
601 Pennsylvania Avenue, NW
South Building, Suite Five Hundred
Washington, DC 20004

May 14, 2021

Commissioner David Altmaier, Co-Chair
Director Dean Cameron, Co-Chair
NAIC Special (EX) Committee on Race and Insurance
National Association of Insurance Commissioners
444 North Capitol Street NW, Suite 700
Washington, D.C. 20001-1512

Submitted via email: Kay Noonan, KNoonan@NAIC.org

RE: NAIC Special (EX) Committee on Race and Insurance 2021 Charges

Dear Commissioner Altmaier and Director Cameron:

On behalf of our member plans, America's Health Insurance Plans (AHIP) [1] would like to thank you for the opportunity to comment on the 2021 Proposed Charges released by the Special (EX) Committee on Race and Insurance. AHIP commends the NAIC for taking concrete steps to reduce healthcare disparities and promote health equity. Every American deserves access to high-quality care. For far too long, discrimination and systemic racism have served as barriers to health equity for minority and underserved communities. ***Health insurance providers know that ending these barriers is the key to an equitable health care system.***

On April 9, AHIP offered preliminary comments to the 2021 Proposed Charges, and with this letter, we offer further remarks to the proposed NAIC work.

Special (EX) Committee on Race and Insurance Proposed Charge B: Coordinate with existing groups such as the Big Data and Artificial Intelligence (EX) Working Group and the Casualty Actuarial and Statistical (C) Task Force and encourage those groups to continue their work in predictive modeling, price algorithms and artificial intelligence (AI), with a particular focus on how race is impacted.

Artificial Intelligence (AI) leveraging and applying machine learning has many benefits and is predicted by many to become commonplace in the coming years. Advanced analytics and predictive algorithms, a subset of AI, are currently in use within healthcare to enhance clinical decision support, improve health care quality, and detect fraud. However, because AI is built upon available data and a series of mathematical and computational assumptions, it risks perpetuating and possibly magnifying existing biases. Thus, it is critical that users are vigilant in assessing, identifying, and mitigating unintended consequences, such as disadvantaging certain individuals or groups/categories of consumers. Regardless of whether the user is an insurer or another type of business, users should strive to prevent harmful impacts based on race, ethnicity, sexual orientation and gender identity (SOGI), disability, socioeconomic status, geographic regions, and other unchanging characteristics and legally protected classifications.

[1] America's Health Insurance Plans (AHIP) is the national association whose members provide coverage for health care and related services to hundreds of millions of Americans every day. Through these offerings, we improve and protect the health and financial security of consumers, families, businesses, communities, and the nation. We are committed to market-based solutions and public-private partnerships that improve affordability, value, access, and well-being for consumers.

Currently, however, there is no consensus on how bias should be defined and/or measured. We are committed to working with relevant stakeholders, developers, and/or vendors to eliminate biases in algorithms and AI. AHIP recently joined the Consumer Technology Association (CTA), which has convened more than 60 organizations – from global tech brands to startups and health care industry leaders –in developing a new ANSI-accredited standard that identifies the core requirements and baselines to determine trustworthy AI solutions in health care. This standard, part of CTA's initiative on AI in health care, is the second in a series of standards focused on implementing medical and health care solutions built on AI. The first step in identifying bias is the transparency of the data and methodologies used. We strongly recommend that the NAIC collaborate with these industry-driven efforts as a part of the work of this workstream.

Special (EX) Committee on Race and Insurance Proposed Charge C/Workstream One: Continue research and analysis to develop specific recommendations on action steps that state insurance regulators and companies can take to improve the level of diversity and inclusion in the industry, including: 1. Seeking additional engagement from stakeholders to understand the efficacy of diversity-related programs, how companies measure their progress and what state insurance regulators can do to support these efforts. 2. Collecting input on existing gaps in available industry diversity-related data.

To achieve greater health equity, America's diversity must be reflected at all levels within health care organizations. AHIP and our member plans believe that promoting organizational diversity, equity and inclusion is an imperative and must be part of every organization's DNA. We believe companies have a civic duty and corporate responsibility to their communities, and we believe that inclusiveness is a critical component of that responsibility. We are committed to DEI by: increasing company vigilance to interview, hire, and promote candidates from diverse communities; expanding and growing supplier diversity across the industry; and deploying or updating unconscious bias and conscious inclusion training to improve accountability and impact within organizations.

AHIP believes in the importance of cultural competency and cultural humility training, tailored to different populations and communities, to ensure our staff and member organizations approach each individual with empathy, respect, care, and concern for each individual's well-being. We also believe developing effective implicit bias and anti-racism training methods, topics, and standards will help promote culturally competent and equitable care for our beneficiaries.

AHIP recently conducted a series of interviews with prominent leaders in health care to better understand the role health insurance providers must play in improving health equity. These conversations lay the foundation for the work we all must do to fight racism and discrimination, both in health care and beyond. AHIP member plans have been engaged and continue every day to do this vital work. More details of specific companies and actions are available at AHIP's *Health Equity Spotlight*. AHIP and our member plans will continue to listen—and to act—to promote organizational policies and practices that advance diversity, equity, and inclusion while also collaborating with other public and private partners to address upstream inequities.

<u>Special (EX) Committee on Race and Insurance Proposed Charge G/Workstream Five</u>: Consider enhanced data reporting and record-keeping requirements across product lines to identify race and other sociodemographic factors of insureds. Consider a data call to identify resources and products sold in specific ZIP codes to identify barriers to access.

Standardizing data collection and reporting on race, ethnicity, language, disability, and sexual orientation and gender identity data will ensure we better understand our consumers' identities which will help inform more appropriate care interventions. It will also facilitate aggregation, measurement, reporting, and interoperable sharing of data —which will help health insurance providers to identify and address disparities. We want to better understand our populations so that they may receive more appropriate care. However, we ask that the NAIC, regulators and policymakers consider the current barriers to collecting these data, including the important cultural sensitivity of personal agency.

AHIP members believe that direct data is the most accurate and reliable type of data on race and ethnicity, but such data can be challenging for health plans to collect or obtain. We believe there are four main pathways to the collection of this data: 1) collection at enrollment; 2) surveying members or other outreach methods; 3) obtaining the data from providers as part of a claim or from the Electronic Health Record (EHR), and 4) obtaining data from employers or government agencies that collect this data. Key challenges with data collection at enrollment include:

- Statutory Barriers: Several states such as Maryland, California, New Jersey, and New Hampshire have or at one point had laws barring the collection of race and ethnicity data on applications for insurance over concerns of this data being used to determine eligibility for benefits. In addition, state policymakers are currently contemplating legislation that would further impede health insurance providers' ability to collect data. For example, Colorado has pending legislation, SB21-169, which would prohibit the use of certain protected class information "in any insurance practice."
- Regulatory Barriers: Policies and procedures required by governing agencies (e.g., the state-level Departments of Insurance) make it difficult to revise enrollment forms so that health plans can collect racial and ethnic data.
- Employer Health Plan Sponsor Barriers: Many employers may be hesitant to update enrollment forms or to ask employees to provide this data for insurance enrollment. Additionally, some employers do not allow insurers to reach out to their employees to collect demographic data.
- HIPAA Transaction Standards: The HIPAA-prescribed 834 enrollment transaction form does not require the inclusion of demographic codes leading to incomplete data provided to insurers. Claims data is similarly limited by the HIPAA-prescribed 837 claims transaction forms that do not require the use of demographic codes.
- Negative Member Response to Data Collection: Survey data is often met by negative member reaction and response to such data collection. There may be a perception of potential discrimination for benefit eligibility, distrust, and lack of understanding of the purpose of the collection. Other considerations include difficulties in successful outreach due to issues such as churn and changes in address.
- Interoperability Challenges: Electronic Health Record (EHR) data is not routinely shared with plans unless attached to claims. Interoperability issues may also impede the sharing

of data between plans and providers given lack of data standards and the use of different codification structures.

- Community Trust: Underscoring all these challenges is the need to address issues of trust among consumers about the collection and sharing of potentially sensitive data between clinicians with health insurance providers.

Indirect data, such as census data, is more feasible to collect, but this data may be less accurate. This data may also lack validity with consumers and other stakeholders who distrust this data and fear it could mask disparities. The feasibility of indirect data collection could be improved if software vendors that support the accreditation and measurement process were required to load a standardized methodology into their programs to ensure that health plans and health care organizations use the same methodology for indirect data estimations. This will improve accuracy and all for better apples-to-apples comparisons across the health care system.

We believe in the importance of collecting this data and its utility in identifying and eliminating health disparities. We stand ready to work with the NAIC, along-side of consumers, policymakers, providers, and employers to help stakeholders understand why this data is being collected, how it will be used, and the need to remove policy and operational barriers to better understand healthcare disparities. We also encourage the NAIC to join us in developing frameworks, guidance, and best practices to help health plans collect race/ethnicity data at scale in patient-centered and respectful ways. We state this with understanding the importance of earned trust by individuals and the cultural legacies that will continue to make this a long term but important undertaking.

Special (EX) Committee on Race and Insurance Proposed Charge H: Continue research and analysis related to insurance access and affordability issues, including:

H.3 (Workstream Five): Measures to advance equity through lowering the cost of health care and promoting access to care and coverage, with specific focus on measures to remedy impacts on people of color, low income and rural populations, and historically marginalized groups, such as the LGBTQ+ community, individuals with disabilities, and Alaska Native and other Native and Indigenous people.

H.4 (Workstream Five): Examination of the use of network adequacy and provider directory measures (such as provider diversity, language, and cultural competence) to promote equitable access to culturally competent care.

H.5 (Workstream Five): Conduct additional outreach to educate consumers and collect information on health and health care complaints related to discrimination and inequities in accessing care.

AHIP supports promoting diverse provider networks that reflect the communities we serve so that our enrollees can find providers that meet their preferences and needs and to assure that the people we serve receive culturally competent and patient-centered care. An important component in achieving that goal is to make it easy for consumers to know and understand provider/practitioner demographic diversity and diversity of staff and roles on the care team. However, many consequential systemic barriers have resulted in a long-standing lack of diversity within the health care workforce and pipeline that regrettably have been over a century in the making. AHIP is committed to working with other relevant stakeholders, including the educational

system, to address the insufficient numbers of diverse individuals within the workforce pipeline. We support policies and programs that facilitate and incentivize people of diverse backgrounds to enter the health care workforce, including loan repayment and scholarship programs like the National Health Service Corps and Nurse Corps.

Additionally, we recognize that obtaining and displaying provider demographic data will help consumers find someone who they feel comfortable seeing for care. However, we also want to be mindful of providers' concerns of possible discrimination by patients if their private information is publicly displayed. We, therefore, are committed to exploring the best ways to communicate the diversity of our provider networks while protecting providers' personal information.

Enhanced training on cultural competency, cultural humility, unconscious bias, and anti-racism that leads to actionability and accountability can promote empathy, respect, and understanding amongst our provider networks to ensure everyone is treated with respect regardless of racial or demographic harmony between our providers and our consumer members. Promoting diverse provider networks that reflect the communities we serve and disclosing provider demographics will allow our beneficiaries to find providers that meet their preferences and needs to receive culturally competent and patient-centered care. AHIP and our members are committed to working with providers, insurance regulators and those who regulate health professionals to explore the best ways to identify and communicate the diversity of our provider networks while protecting providers' personal needs and preferences.

Special (EX) Race and Insurance Committee Proposed Charge I: Direct NAIC and Center for Insurance Policy and Research (CIPR) staff to conduct necessary research and analysis, including:

I.3 (Workstream Five): Aggregation of existing research on health care disparities and collection of insurance responses to the COVID-19 pandemic and its impact across demographic populations.

Over the last year, the COVID-19 crisis has ravaged the physical and economic health of communities across the country. Disadvantaged communities and communities of color have experienced higher rates of infection and death from COVID-19. They also are suffering greater economic harm. More than ever, we need to take sustained action to improve health equity.

The COVID-19 crisis has unmasked and shined a spotlight on the health inequities that have long existed. Throughout the pandemic, Americans have seen the profound and disproportionate impact of COVID-19 on communities of color. Although racial and ethnic information is currently available for only about 35% of the total deaths in the U.S., even this limited sample shows that Black Americans and other historically underserved groups are experiencing COVID-19 infection and death rates that are far higher than the overall proportion of these populations in America. For example, while Black Americans represent only about 13% of the population in the states reporting racial/ethnic information, this population accounts for about 34% of the total number of COVID-19 deaths in those states.[2] Asian Americans and Latinx Americans also show elevated impacts in some regions. Moreover, at the national level, Pacific Islander, Latinx, Indigenous, and

[2] https://coronavirus.jhu.edu/data/racial-data-transparency

Black Americans all have COVID-19 death rates of double or more that of White and Asian Americans. [3]

Since the beginning of the COVID-19 crisis, health insurance providers have innovated, built new service delivery models, and partnered with service providers and the communities we serve to deliver critical resources to people experiencing greater health and social needs during this challenging time. Recognizing the inequities exposed during the COVID-19 crisis, AHIP has launched several initiatives with our health insurance provider members to respond to these challenges. To build upon these actions and take the commitment of health insurance providers even further, AHIP and the Blue Cross Blue Shield Association (BCBSA), in collaboration with the Biden Administration, launched the national Vaccine Community Connectors pilot initiative. This is a concerted, coordinated effort to vaccinate two million seniors age 65+ in communities that are most at-risk, vulnerable, and underserved, such as Black and Hispanic communities. The initiative focuses on expanding vaccinations for those who may have difficulty signing up for appointments or getting to vaccine administration sites, such individuals who are home-bound, who have disabilities, and those who lack transportation options.

As vaccine supplies expand and registrations have become more available, health insurance providers are using our combined expertise, data, and insights and working with their partners to:

- Identify seniors 65+ who are vulnerable to COVID-19 and who live in areas where vaccination rates are most inequitable.
- Work with partners in the community to educate seniors on the safety, efficacy, and value of COVID-19 vaccines.
- Contact those seniors who are eligible to get a vaccine through multiple channels to:
  - Facilitate vaccine registration and appointment scheduling.
  - Answer their questions about vaccines.
  - Help them to understand when, where, and how they can receive vaccines and remind them about any required second doses.
  - Coordinate services to help overcome barriers that may stand between them and getting vaccinated, including transportation.
- Work with federal, state, and local leaders to deliver vaccines to underserved communities and closely collaborate with other vaccination partners, for example pharmacies.
  - Track progress to ensure that those who need vaccinations the most are receiving them.

As America reaches the COVID-19 "vaccine wall," in which more vaccines are available than Americans who demand appointments, health insurance providers are taking multifaceted approaches to improve vaccine uptake. New data and survey results continue to inform the work that AHIP and its member plans are doing to partner for vaccine delivery, vaccination coordination and education on safety and efficacy of vaccinations.

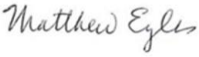
[3] https://www.apmresearchlab.org/covid/deaths-by-race

Proposed New Charges to the Health Insurance and Managed Care (B) Committee, the Mental Health Parity and Addiction Equity Act (B) Working Group, the Health Innovations (B) Working Group and the Market Regulation and Consumer Affairs (D) Committee:

New health equity charges have been proposed for the Health Insurance and Managed Care (B) Committee, the Market Regulation and Consumer Affairs (D) Committee and (B) Committee Working Groups. As previously stated, health insurance providers are committed to improving health equity in our communities, and we are proud to serve Americans of every age, gender, gender identity, race, creed, color, sexual orientation, and health status, working with partners and community leaders across the entire health care system. To that end, we support coordinated, collaborative discussions with partners across the entire health care system to address the urgent national imperative that stands in front of all of us – to improve the health care system so that every American has an equal opportunity to thrive.

In closing, we express our ongoing appreciation for the NAIC's willingness and commitment to undertake this critically important work. We stand ready and committed as well to work together with you to address these vital issues in a meaningful and productive way in pursuit of real movement and real change.

Sincerely,



Matthew Eyles
President and Chief Executive Officer
America's Health Insurance Plans

May 14, 2021

BlueCross BlueShield Association

1310 G Street, N.W.
Washington, D.C. 20005
202.626.4800
www.BCBS.com

Commissioner David Altmaier, Co-Chair
Director Dean Cameron, Co-Chair
Special Committee on Race and Insurance
National Association of Insurance Commissioners
444 North Capitol Street NW, Suite 700
Washington, D.C. 20001-1512

Submitted electronically to: Kay Noonan (knoonan@naic.org)

Dear Commissioner Altmaier and Director Cameron:

The Blue Cross Blue Shield Association (BCBSA) appreciates the opportunity to provide comments on the proposed charges for 2021 to the Special (EX) Committee on Race and Insurance (Special Committee) and related charges to other committee groups. BCBSA supports the continued efforts of the Special Committee to advance diversity and inclusion and address racial disparities that disadvantage people of color and historically underrepresented communities.

BCBSA is a national federation of 35 independent, community-based and locally operated Blue Cross and Blue Shield (BCBS) companies (Plans) that collectively provide health care coverage for one in three Americans. For more than 90 years, Blue Cross and Blue Shield companies have offered quality health care coverage in all markets across America – serving those who purchase coverage on their own as well as those who obtain coverage through an employer, Medicare and Medicaid.

As we stated in our preliminary comments to the proposed charges, BCBSA believes everyone should have access to high-quality health coverage and care regardless of race, ethnicity, national origin, sex, gender identity, sexual orientation, religion, education level, age, geography or disability. We affirm the need to recognize the negative impact of long-standing structures of racism and discrimination, underlying bias and social factors on the health and well-being of many Americans. To that end, every BCBS company across the country, and in Puerto Rico, has launched at least one local initiative to address health disparities.

Our health equity policy recommendations outlined in our Issue Brief, *Addressing Health Disparities and Inequities in Communities of Color*, align with the Special Committee's proposed 2021 charges and efforts to promote improved access to quality, affordable coverage and culturally competent care. As the Special Committee works to finalize the proposed 2021 charges, we offer the following comments and recommendations.

Data

BCBSA agrees that availability of accurate and quality data is essential in improving health outcomes in vulnerable communities. In our December 2020 letter to the Special Committee, we raised the importance of NAIC support for health industry-led efforts, such as the HL7 Gravity Project - a multi-

industry effort to reduce current barriers to the integration of efforts to integrate social risk data into clinical decision making to improve health outcomes, while supporting appropriate safeguards and privacy protections for the use of sensitive consumer information.

In order to continue improving the quality and accuracy of necessary data to drive health equity, the availability of accurate and quality race and ethnicity (R/E) data is key to improving health equity outcomes in all communities across the country. However, today, there are no national industrywide standards in the health sector to facilitate consistent R/E data collection and appropriate use, leading to challenges around the accuracy, quality and consistency of the data collected. Compounding the challenges are the many overlapping and complex federal and state laws governing R/E data collection and use in the health care sector. For instance:

- At the federal level, the collection and use of R/E data are guided by Section 1557 of the Affordable Care Act (ACA), the Health Insurance Portability and Accountability Act (HIPAA), and Section 5 of the Federal Trade Commission (FTC)'s Unfair Deceptive Practices Act (UNDP) as well as the Civil Rights Act of 1964.
- At the state level, collection and use of R/E data are guided by individual state privacy laws, insurance regulations and Unfair and Deceptive Practices/Insurance Practices (UNDP/UNIP) laws, which guide and may restrict how R/E data are collected and used by the health care entities.

Adding to the complexity is the lack of collection and appropriate use standardization around R/E data sets as R/E data come from different sources (i.e., provider records, employer records, member-provided information and imputation algorithms) and are collected using varying standards, which has an impact on the accuracy, consistency and completeness of the data.

We ask the Special Committee to reflect these challenges in two specific ways: First, in undertaking initial steps be mindful of the complex and overlapping nature of current federal and state legal and regulatory restrictions around R/E data collection and use. Any initial data calls to implement health equity programs will be challenged by these restrictions. Second, conduct a study to review current legal and regulatory barriers to appropriate and secure collection and use of R/E data for the purposes of supporting health equity efforts. Given the inconsistencies in data collection methods today, unless and until a national health industry standard can be developed and implemented across the industry, we will continue to face existing data accuracy and quality challenges. BCBSA is also reviewing ways the health sector can better support such efforts, and we stand ready to assist the Special Committee in meeting our shared goals of achieving health equity.

In the appendix to this letter, we provide charts that illustrate the federal and state laws that regulate how R/E data may be collected and used by the healthcare insurance industry today.

Provider Diversity and Linguistically & Culturally Competent Care

We share the Special Committee's goal of promoting equitable access to high-quality care through improving the racial and ethnic diversity of providers, in addition to addressing language diversity needs and cultural competency challenges. To meaningfully address existing barriers in access to diverse providers and providers offering linguistically and culturally competent care, we need to focus on the root

causes: a lack of diversity within our health care system and health education pipelines; limited availability of providers in areas that are predominantly communities of color or communities where English is not the primary language spoken; and the critical need to promote cross-cultural and implicit bias training within health professions.

The numbers on provider diversity are stark. Latinos make up more than 18 percent of the U.S. population, but just 6 percent of physicians.[1] Black Americans make up more than 13 percent of the U.S. population, but account for fewer than five percent of the physicians.[2] Additionally, between 1978 and 2008, 88 percent of graduates of U.S. medical schools were white or Asian. Black Americans, American Indians and Latinos together made up the remaining 12 percent.[3]

BCBS Plans examine and refine contracting strategies on an ongoing basis to ensure the maximum access to quality and affordable care for members, and continue to be committed to compliance with network adequacy and provider directory requirements. However, focusing on network standards in communities with provider shortages may not help improve access to culturally competent care. Instead, BCBSA urges NAIC to consider opportunities to inform patients of the providers currently available (e.g., considering how best to identify these providers, evaluating whether identifying them by race or ethnicity, for example, has any negative unintended impacts for the providers themselves). Within this process, we recommend the NAIC consider how to facilitate the following steps to help alleviate expected workforce shortages, support development of a diverse next generation of health care practitioners, and promote workforce retention in underserved and rural communities:

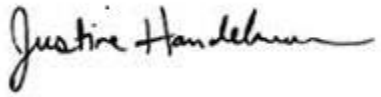
- Collect, analyze and publish health care workforce supply data to inform strategies for workforce development and retention. To address the current health care workforce shortages, which have been exacerbated by the pandemic, it is necessary to have accurate and timely data to understand the true scope of the issue.
- Increase financial support for initiatives such as pipeline programs that improve the diversity of the health care workforce.
- Consider financial incentives for health care organizations to hire and retain culturally competent health care providers and organizational leaders from underrepresented groups, with a particular focus on hiring those individuals from the health organization's community which will help build trust within the health care system.
- Promote culturally competent care by emphasizing the need for cross-cultural and implicit bias training. These trainings should be required for health care practitioners at all levels and state regulators can institute requirements for providers to do continuing education in these areas in order to maintain their licenses. For example, the American Medical Association's graduate medical education competency program helps residents recognize patients' cultural, professional, and biological differences, which can lead to more effective diagnosis, treatment and management.[4]
- Improve access to care for patients and increase the efficiency for providers and health plans to use technologies like telehealth to expand access to patients and beneficiaries. BCBSA supports

[1] https://labusinessjournal.com/news/2020/mar/17/2020-diversity-inclusion-diversity-health-care-key/
[2] https://labusinessjournal.com/news/2020/mar/17/2020-diversity-inclusion-diversity-health-care-key/
[3] https://www.washingtonpost.com/national/health-science/even-as-the-us-grows-more-diverse-the-medical-profession-is-slow-to-follow/2018/09/21/6e048d66-aba4-11e8-a8d7-0f63ab8b1370_story.html
[4] https://www.sciencenews.org/article/black-newborn-baby-survival-doctor-race-mortality-rate-disparity

the efforts of state and federal agencies to remove arbitrary restrictions that dictate how, when and where a provider can treat patients, including geographic and originating site requirements which are not evidence-based or have no impact on quality of care. We also support increased investment in broadband and telehealth infrastructure to connect rural and underserved communities.

BCBSA and a broad range of other stakeholders have provided input into the development of the workstream reports on race and insurance. We appreciate the NAIC's thoughtful consideration of those previous comments in developing the reports. We look forward to partnering with the Special Committee as you continue to seek industry input and technical expertise on this important topic. If you have any questions or want additional information, please contact Randi Chapman at randi.chapman@bcbsa.com or 202.826.5156.

Sincerely,



Senior Vice President
Office of Policy and Representation

cc: Commissioner Jessica Altman
Commissioner Ricardo Lara

APPENDIX

Federal and State Laws and Regulations on the Collection and Use of Race and Ethnicity (R/E) Data by the Health Insurance Industry	
FEDERAL	**STATE**
• ACA: May collect R/E data using OMB/HHS standard categories for federally funded programs, subject to anti-discrimination laws under the Civil Rights Act. • Considered PHI and subject to HIPAA and HHS/OCR enforcement • Subject to Unfair Deceptive Acts/Practices (UDAP) laws and subject to FTC enforcement • Subject to the Civil Rights Act of 1964 – for government funded programs with DOJ enforcement	• State Insurance Codes: Many states specifically prohibit R/E data collection on health insurance applications (CA, PA, TX, etc.) • Some states also require strict use purpose if plans collect R/E data (MD) • State privacy laws also strictly regulate R/E data: e.g. R/E data is considered "sensitive data" under CA law (CCPA) • State Unfair Deceptive Insurance Practices/Acts (UDIP/UDAP) apply in collection and use of R/E data and State AGs enforce. • Some states also allow private right of action/class action

Federal and State Regulations on R/E Data Collection and Use	
Collection of R/E Data	**Allowable Uses – State and Federal Laws**

• Must be voluntary – self identified, cannot mandate for government funded/supported programs, silent for private plans
• OMB/HHS provides R/E data category standards for government funded programs, no industry standards for private sector
• Many states specifically prohibit collection of R/E data in insurance applications (CA, PA, etc.)
	• ACA allows use of R/E data for the purposes of addressing health inequity only
	  • Once collected, requires data to be made available publicly
	  • Requires reporting to HHS Office of Minority Health, CDC, and CMS
	• Considered PHI, subject to HIPAA requirements
	• Unfair deceptive acts/practices under federal or state laws
	  • Prohibit use of R/E data for insurance underwriting or eligibility purposes
	  • Need to show clear/transparent use purpose of R/E data

CENTER for ECONOMIC JUSTICE | FAIR ACCESS FAIR TREATMENT

Supplemental Comments from the Center for Economic Justice

To the NAIC (EX) Committee on Race and Insurance

May 14, 2021

The Center for Economic Justice (CEJ) submits the following comments to the NAIC Committee on Race and Insurance regarding proposed 2021 charges to supplement our initial comments of April 10, 2021.

CEJ continues to urge the Committee to develop a more systematic approach to examining issues of race and insurance. What are your goals? What are your strategies? How do you measure the problem and how do you measure success?

To illustrate, let's look at the Diversity, Equity and Inclusion goals and strategy. We can both define and measure the problem – a lack of presence of members of communities of color among insurers, producers and regulatory agencies. The starting point should be to measure the problem – how many people from communities of color are there on insurer boards? In insurer senior management? Among licensed producers? Among senior regulatory staff? Among NAIC management and staff? Among presenters and panelists at NAIC events? These initial measurements are the baseline against which to judge progress over 6 month intervals. Measurement is essential to determine progress and the effectiveness of strategies.

While the Committee has structured itself as five workstreams, there are really two principal efforts – one directed at Diversity, Equity and Inclusion and one directed at insurer practices and public policy that reflect and perpetuate systemic racism in insurance. The Committee has separated the first activity – DE&I – into insurer and regulator streams. As set out in our April 10, 2021 letter, there must be a third stream dedicated to improving consumer stakeholder engagement, generally, and community of color stakeholder engagement, particularly, in NAIC and state regulatory processes.

The effort to address systemic racism in insurance must be a NAIC-wide effort with every part of the NAIC and every committee, task force and working group explicitly considering issues of race for each activity. For NAIC meetings and events, it means doing a better job of including an equal number of consumer stakeholders as industry stakeholders and including many consumer stakeholders of color among the consumer stakeholders. For NAIC committees, task forces and working groups, it means asking each group to look at their specific topic area, learn about systemic racism and identify possible impacts of such systemic racism on the insurance activities related to the groups' area of responsibility. CEJ has experienced

firsthand several NAIC groups excusing any discussion of racial disparity in their subject matter area by claiming that the Committee on Race will be examining those "issues." As set out in our April 10, 2021 comments, we urge the NAIC to assign every NAIC committee, task force and working group a charge to identify insurer or producer or regulatory practices that may reflect and perpetuate systemic racism.

We cannot stress the importance of examining all aspects of insurers' operations and regulatory practices for racial bias. While regulators and a number of state legislators have taken up the issue of racial bias in pricing, there has been no attention to examining the impacts of systemic racism on marketing, claim settlement and antifraud. Yet, each of these aspects of industry operations presents far greater risk of racial bias than pricing. While data and algorithms used in pricing have been subject to some regulatory review and activity by the NAIC, there has been no similar effort for the other three areas. Yet, insurers' use of big data and ability to micro-target marketing efforts means that underwriting is now happening at the marketing phase of the insurance life cycle.

Similarly, no attention has been given to potential racial bias in claims settlement and anti-fraud, despite the fact that these parts of the insurance operation utilize big data and AI as much or more than used for pricing. Consider the following from the May 17 issue of *Auto Insurance Report*:

> A pair of European companies – **Friss** from the Netherlands, and **Shift Technologies** from France, are gaining traction in the United States with insurance fraud software tools driven by artificial intelligence. Though similar tools have been in the market for some time, insurers' willingness to take a chance on newcomers with little U.S. experience speaks to the rapid changes in artificial-intelligence (AI) modeling that has enabled a wider range of competitors the ability to offer different tools to address fraud and expand their models to include underwriting.
>
> By looking at an insurer's claims data, the companies apply AI-based solutions to identity possible fraudulent activity.
>
> Friss says it processes 103 million claims a year. After downloading an insurer's claims data, it tests the model against known claim outcomes – be it paid, denied, fraudulent, settled or otherwise resolved. The model then links those findings with external data sources, ranging from the insurer's historical claims data set, the **National Insurance Crime Bureau**, weather data, **Carfax** data, data found by scraping the web and social media, as well as the claimant's credit score and previous bankruptcies. Thus armed, Friss builds a fraud score for each claim.
>
> Friss is now expanding into underwriting with its acquisition last month of **Ohio**-based **Terrene Labs**, which provides data – such as business demographics, risk scores and information scraped from the Web – for pre-filling commercial lines applications and other forms. The idea is to provide similar insights found in the claim process up front during the underwriting process.

> [Friss] Using historical claims data from the insurer as well as third-party information, such as that available through **TransUnion's** TLOxp system, Shift assesses the fraud risk. Shift's software analyzes the text of documents and searches for discrepancies like the use of different fonts, evidence of the use of Photoshop, and repeated uses of a photo. Shift's AI checks that the reported damage is actually covered by the policy and looks to make sure the accident and repairs relate.

What could go wrong with AI systems using data sources known to be biased against communities of color? Of course, these are just new entrants – there are several other vendors who have been providing antifraud data sources and algorithms for many years.

Which brings us to the strategy for identifying and addressing systemic racism in insurer practices – the institutional structures that reflect and perpetuate historic discrimination. We start again with measurement. Here, the measurement responsibility starts with insurers to examine proxy discrimination and disparate impact of their practices. As set out in prior comments and included in the attached presentation, proxy discrimination refers to practices which involve predictive variables – whether for marketing, pricing, claims settlement or antifraud – which are predicting race and not the outcome variable. With proxy discrimination, the correlation between the predictive variable and the outcome is, at least in part, spurious – because it is predicting race and not the actual outcome. Regulators have authority now to address proxy discrimination because proxy discrimination clearly fits into current regulatory definitions of unfair discrimination.

Disparate impact refers to racial bias in outcome because the outcomes themselves reflect historic discrimination. For example, recent studies have shown that historically-redlined communities are at greater risk of flooding, impacts of climate change and environmentally-linked illnesses. Addressing disparate impact requires a policy decision – in the same way that public policy has prohibited the use of race for distinguishing consumers in pricing or claims settlement.

Whether proxy discriminating or disparate impact, the starting point is measurement of the problem. There is a common methodology to examine and identify both proxy discrimination and disparate impact, as shown in the attached presentation. While such testing is the core of the effort to address systemic racism in insurance, there are supporting pieces needed, again, as set out in our April 10, 2021 comments.

One of the most important messages we offer to the Committee is that utilizing this common methodology to identify and eliminate proxy discrimination and identify and minimize disparate impact moves the debate about race in insurance beyond arguments about banning or permitting certain types of data. You are familiar with the arguments we seen over the past 25 years – consumer stakeholders argue that certain data sources are biased against communities of color and produce either proxy discrimination or disparate impact. Industry argues that they don't use race and that the data sources are predictive of claims. Putting aside the fact that insurers use many of the questionable data sources to predict profitability, not claims, one of the benefits of utilizing a standard methodology to test for proxy discrimination and disparate impact

is that it by-passes these debates. If a data source is simply a proxy for race, the methodology will eliminate its value. If a data source is partly a proxy for race and partly predictive of outcome, then the methodology will endorse using that data source, but shorn of its correlation with race. It is impossible to overstate the value of moving beyond these historical arguments to meaningfully address systemic racism in insurance.

First, there must be clarity on the legal and policy framework about the definition of unfair discrimination. The recent NCOIL action to define proxy discrimination as only intentional use of a proxy designed to discriminate on the basis of race or other protected class factors must be rejected. The NAIC must develop definitions of proxy discrimination and disparate impact that both reflect current regulatory practice to stop proxy discrimination and establish a clear framework for considering practices that have significant disparate impact.

Second, there must be a more robust regulatory data collection framework to evaluate actual consumer outcomes, including the outcomes of communities of color. Auditing an algorithm is simply not sufficient for at least two reasons. First, an algorithm may not produce the intended results. Second, regulators are seriously over-matched by insurers when it comes to the technical expertise involved in designing and auditing big data / AI models.

Third, regulatory capabilities and resources must be upgraded in the areas of data collection, database management, data scientists and data analytics. This is not a criticism of regulators, but simply a recognition that the auditing approach to insurance regulation must give way to a more data-driven analytical approach.

Fourth, the subject matter committees, task forces and working groups must be tasked with learning about systemic racism and examining their subject areas for regulatory and public policies that may reflect and perpetuate historic discrimination. While the Committee has workstreams for major lines of insurance – life/annuity, health, property /casualty – there are no workstreams targeted at marketing, claims settlement and antifraud. Similarly, there is no workstream targeted at examining insurer investments that promote, for example, environmental racism or predatory lending targeting communities of color.

We suggest that the Market Regulation (D) Committee should have one of, if not the most prominent, role in examining systemic racism in insurance – whether that is examining marketing or claims settlement or antifraud practice or developing resources, tools and guidelines for analyzing racial bias in insurer practice and consumer outcomes.

We also suggest that, at least for life/annuity and property casualty lines of business, the approaches are similar – define the key legal and policy concepts, measure current outcomes, identify proxy discrimination and disparate impact, recommend updated statutory or regulatory guidance. We urge the Committee to consider the recommendations of our consumer representative colleagues regarding health insurance and health-related issues.

We offer comments on specific charges. Charge F (1) for life insurance and annuities states, "The impact of traditional life insurance underwriting on minority populations, considering the relationship between mortality risk and disparate impact." CEJ's analytic framework provides a more systematic approach to this endeavor, as set out in these and our April 10, 2021 comments.

Regarding Charge (F) 2, the property casualty stream lists six items, but provide no systemic approach to examining the issues. Again, we suggest the framework set out our comments. We also suggest dropping the issue of correlation vs. causation. While we understand regulators' desire to identify spurious correlations between predictive and outcome variables, that effort is best addressed by applying a methodology to identify proxy discrimination and disparate impact. Doing so will address regulators' concerns while avoiding the rabbit hole of endless discussions about causation vs. correlation. Moreover, at the end of the day, whether the standard is correlation or causation doesn't affect whether the data source or practice is having racially-biased outcome.

Regarding Charge G, we clearly support improved data collection for consumer market outcomes. However, we suggest that the most efficient and effective data collection regime is with transaction reporting of sales and claims – the type of reporting currently done for workers' compensation and for large parts of the homeowners, personal auto and commercial lines markets and is underway for life insurance. We suggest that the D committee be assigned this charge given their current responsibilities for market regulation data collection.

Regarding Charge H (1) for life insurance, we urge the Committee to avoid wandering into "financial literacy" issues for a couple of reasons. First, systemic racism is about structure and policies that reflect and perpetuate historic discrimination. Considering financial literacy as a cause of racial disparity is essentially blaming the victim. We urge to the Committee to focus on the structural issues for which insurance regulators have authority and capability. We suggest a better focus is on whether insurers' products are designed to serve communities of color. The fact is that the percentage of the population that purchases individual life insurance has massively declined over the past 30 years while the average coverage amount has increased dramatically – evidence that the life insurance industry decided to focus on more affluent consumers at the expense of communities of color. Second, there are many other groups working on consumer financial education and the value-added by the NAIC is likely quite low.

Regarding Charge H(2) for life insurance, we support examining disparities in the number of cancellations/rescissions among minority policyholders, but suggest that this is just one part of a broader examination of outcomes for communities of color. Further, with a well-developed data collection program, a variety of questions can be answered with the same data and better analytics can be applied than requesting data for a single issue.

Regarding Charge H(6) for property casualty, it is unclear what is intended by "mitigating the impact of residual markets, premium financing and nonstandard markets on disadvantaged groups." We suggest that a first step is to measure the incidence of residual markets, premium finance and non-standard markets generally, and then on communities of color, specifically. Again, this can be done as part of a robust market outcome data collection program. Further, we suggest that the issue of residual markets might be examined with a view towards improving residual market products as a mechanism for market discipline for voluntary insurers.

We conclude as we started with a request for the Committee to revise its charges to provide a more systematic approach to examining issues of race and insurance –

- Measuring of the current state of racial inequities;
- Adding improved consumer stakeholder participation to NAIC and regulatory processes to the DE&I workstreams;
- Defining key unfair discrimination concepts;
- Requiring insurers to test for and eliminate proxy discrimination and test for and minimize disparate impact;
- Developing regulatory guidance, resources and tools to facilitate the testing requirement
- Developing a robust market regulation data collection regime to support the measurement of systemic racism in insurance; and
- Tasking each committee, task force and working group with identifying industry and regulatory practices that may reflect and perpetuate historic racial discrimination.

Our last request to the Committee is to not let the insurance trade associations – particularly the property / casualty trades – derail your efforts. As set out the attached presentation, these trades have consistently opposed efforts at the NAIC and in the states to identify and address systemic racism in insurance. These trades have demonstrated their intent to oppose any accountability for insurers regarding race and insurance – whether that was opposing the consideration of race in the principles for AI, their support for the NCOIL definition of proxy discrimination, their hired "experts" to claim "unintended consequences, their false claims about destroying risk-based pricing or their consistent opposition to reporting the data necessary to meaningfully test for unintended and unnecessary racial bias. We greatly appreciate the NAIC's members for standing up to these trades to date in your efforts on race and ask you stand firm in the face of unwarranted defenses of the status quo.

CENTER for ECONOMIC JUSTICE | FAIR ACCESS FAIR TREATMENT

Addressing Systemic Racism in Insurance

Presentation to Casualty Actuarial Society Spring Meeting

May 27, 2021

Birny Birnbaum
Center for Economic Justice

The Center for Economic Justice

CEJ is a non-profit consumer advocacy organization dedicated to representing the interests of low-income and minority consumers as a class on economic justice issues. Most of our work is before administrative agencies on insurance, financial services and utility issues.

On the Web: www.cej-online.org

About Birny Birnbaum

Birny Birnbaum is the Director of the Center for Economic Justice, a non-profit organization whose mission is to advocate on behalf of low-income consumers on issues of availability, affordability, accessibility of basic goods and services, such as utilities, credit and insurance.

Birny, an economist and former insurance regulator, has worked on racial justice issues for 30 years. He performed the first insurance redlining studies in Texas in 1991 and since then has conducted numerous studies and analyses of racial bias in insurance for consumer and public organizations. He has served for many years as a designated Consumer Representative at the National Association of Insurance Commissioners and is a member of the U.S. Department of Treasury's Federal Advisory Committee on Insurance, where he co-chairs the subcommittee on insurance availability. Birny is also a member of the U.S. Federal Reserve Board's Insurance Policy Advisory Committee.

Birny served as Associate Commissioner for Policy and Research and the Chief Economist at the Texas Department of Insurance. At the Department, Birny developed and implemented a robust data collection program for market monitoring and surveillance.

Birny was educated at Bowdoin College and the Massachusetts Institute of Technology. He holds Master’s Degrees from MIT in Management and in Urban Planning with concentrations is finance and applied economics. He holds the AMCM certification.

Why CEJ Works on Insurance Issues

Insurance Products Are Financial Security Tools Essential for Individual and Community Economic Development:

CEJ works to ensure ***fair access*** and ***fair treatment*** for insurance consumers, particularly for low- and moderate-income consumers.

Insurance is the Primary Institution to Promote Loss Prevention and Mitigation, Resiliency and Sustainability:

CEJ works to ensure insurance institutions maximize their role in efforts to reduce loss of life and property from catastrophic events and to ***promote resiliency and sustainability*** of individuals, businesses and communities.

Fair and Unfair Discrimination in Insurance

Provisions regarding unfair discrimination are generally found in two parts of insurance statutes: rating and unfair trade practices.

We find two types of unfair discrimination:

- Actuarial – there must be an actuarial basis for distinction among groups of consumers; and
- Protected Classes – distinctions among groups defined by certain characteristics – race, religion, national origin – prohibited regardless of actuarial basis.

Why Do State and Federal Laws Prohibition Discrimination on the Basis of Race?

Justice Kennedy for the Majority in the U.S. Supreme Court's 2015 *Inclusive Communities* Opinion upholding disparate impact as unfair discrimination under the Fair Housing Act.

Recognition of disparate-impact claims is also consistent with the central purpose of the FHA, which, like Title VII and the ADEA, was enacted to eradicate discriminatory practices within a sector of the Nation's economy.

Recognition of disparate-impact liability under the FHA plays an important role in uncovering discriminatory intent: it permits plaintiffs to counteract unconscious prejudices and disguised animus that escape easy classification as disparate treatment.

Why Are Race and Other Protected Class Characteristics Carved Out of Fair Actuarial Discrimination?

The existence of historical, intentional discrimination based on these characteristics – discrimination that violates state and federal constitutions. But, also, the recognition that the historical discrimination has long-lasting effects that disadvantage those groups. Stated differently, you can't enslave a population for two hundred years and then expect the legacy of that enslavement will disappear overnight.

We continue to see those legacies of historical discrimination – systemic racism -- today both directly and indirectly in policing and criminal justice, housing, and the impacts of the Covid-19 pandemic.

What Information Does This Map of Cleveland Present?

a. Concentration of Minority Population

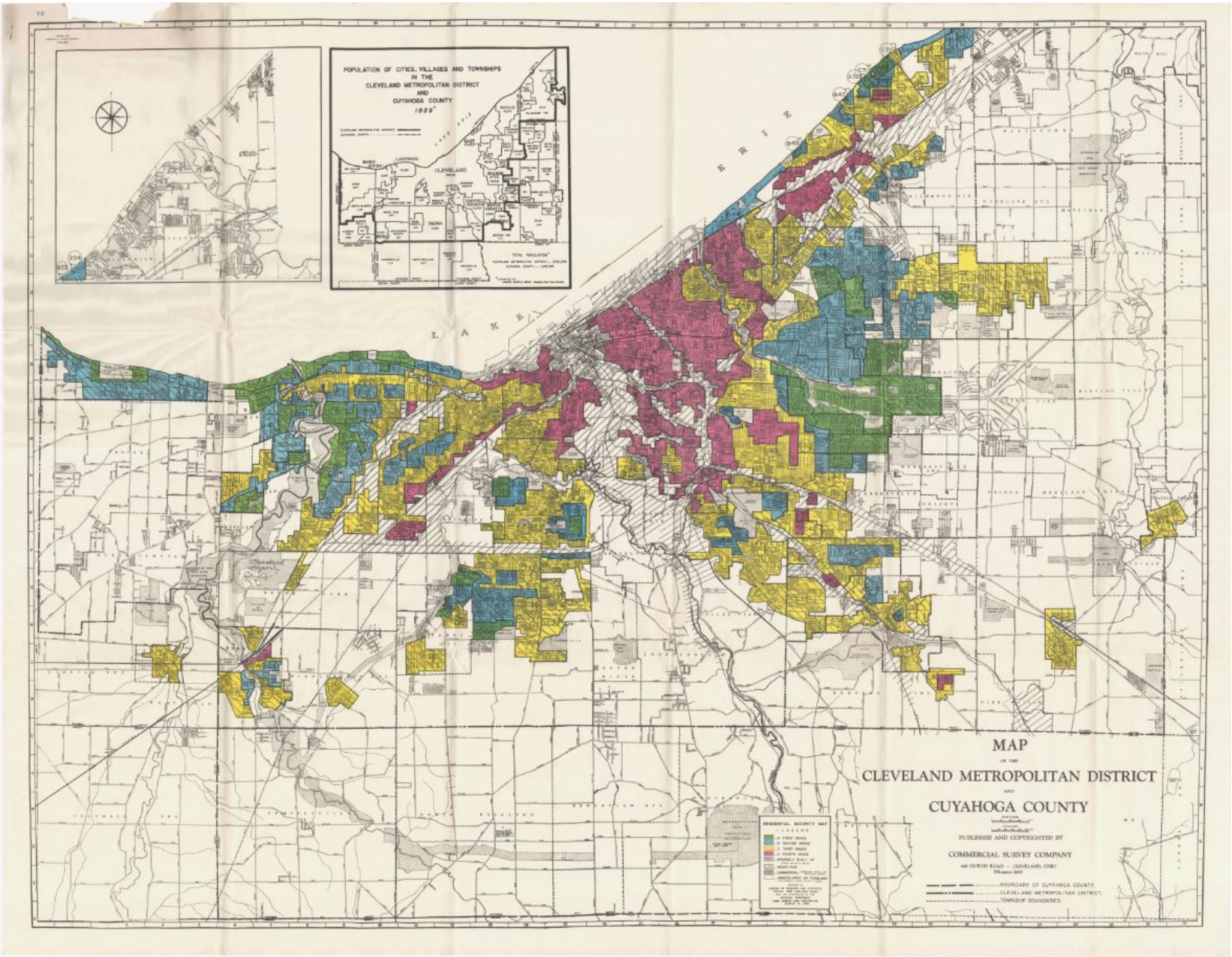
b. Eviction Rates

c. COVID Infections and Deaths Rates

d. Flood Risk

e. Environment-related Illnesses

f. Federal Home Loan Eligibility 1930's to 1960's


POPULATION OF CITIES, VILLAGES AND TOWNSHIPS
IN THE
CLEVELAND METROPOLITAN DISTRICT
AND
CUYAHOGA COUNTY
1939
CLEVELAND
LAKE ERIE
MAP
OF THE
CLEVELAND METROPOLITAN DISTRICT
AND
CUYAHOGA COUNTY
PUBLISHED AND COPYRIGHTED BY
COMMERCIAL SURVEY COMPANY
BOUNDARY OF CUYAHOGA COUNTY
CLEVELAND METROPOLITAN DISTRICT
TOWNSHIP BOUNDARIES

Systemic Racism[1]

Structural racism is the policies and practices that normalize and legalize racism in a way that creates differential access to goods, services, and opportunities based on race.

Systemic racism refers to policies, practices, or directives that result in advantages or disadvantages to individuals or communities based on race, including harm caused by infrastructures that determine access and quality of resources and services.

[1] https://new.finalcall.com/2021/03/09/death-by-zip-code-housing-discrimination-neighborhood-contamination-and-black-life/

How Can Systemic Racism Manifest Itself in Insurance – Whether for Marketing, Pricing or Claims Settlement?

1. Intentional Use of Race – Disparate Intent

2. Disproportionate Outcomes Tied to Historic Discrimination and Embedded in Insurance Outcomes – Disparate Impact

3. Disproportionate Outcomes Tied to Use of Proxies for Race, Not to Outcomes – Proxy Discrimination

The Evolution of Insurers' Analytics: Univariate to Multivariate Analysis

In the past 30 years, insurers have moved away from univariate analysis to multivariate analysis – from analyzing the effects of one risk characteristic at a time to simultaneous analysis of many risk characteristics.

What the problem with univariate analysis?

If I analyze the relationship of age, gender and credit score – each individually – to the likelihood of a claim, the individual results for each risk characteristic are likely capturing some of the effects of the other risk characteristics – ***because age, gender and credit score (or other risk classifications) may be correlated to each other*** as well as to the outcome variable.

How does multi-variate analysis address this problem?

Testing for Disparate Impact and Proxy Discrimination:

A Natural Extension of Typical Insurer Practices

Here's a simple illustration of a multivariate model. Let's create a simple model to predict the likelihood of an auto claim:

$$b_0 + b_1X_1 + b_2X_2 + b_3X_3 + e = y$$

X_1, X_2 + X_3 are the predictive variables trying to predict y.

Say that X_1, X_2 + X_3 are age, gender and credit score and we are trying to predict y – the likelihood of an auto insurance claim

Let's assume that all three Xs are statistically significant predictors of the likelihood of a claim and the b values are how much each X contributes to the explanation of claim. The b values can be tested for statistical significance – how reliable are these estimates of the contribution of each X?

By analyzing these predictive variable simultaneously, the model removes the correlation among the predictive variables.

Use of Control Variables in Multivariate Insurance Models

Suppose an insurer want to control for certain factors that might distort the analysis? For example, an insurer developing a national pricing model would might want to control for different state effects like different age distributions, different occupation mixes or differences in jurisprudence. An insurer would add one or more control variables.

$$b_0 + b_1X_1 + b_2X_2 + b_3X_3 + \mathbf{b_4C_1} + e = y$$

C_1 is a control variable – let's say for State. By including State as a control variable, the correlation of the Xs to State is statistically removed and the new b values are now the contribution of the Xs, independent of their correlation to State, to explaining the likelihood of a claim. When the insurer deploys the model, it still only uses the X variables, but now with more accurate b values.

Disparate Impact as Both a Standard and a Methodology

Let's go back to multi-variate model, but now use Race as a control variable:

$$b_0 + b_1X_1 + b_2X_2 + b_3X_3 + \mathbf{b_4R_1} + e = y$$

R_1 is a control variable – by including race in the model development, the correlation of the Xs to race is statistically removed and the new b values are now the contribution of the Xs, independent of their correlation to race, to explaining the likelihood of a claim

How Do We Interpret the Disparate Impact Analysis?

$$b_0 + b_1X_1 + b_2X_2 + b_3X_3 + \mathbf{b_4R_1} + e = y$$

Result: No Proxy Discrimination or Disparate Impact

Outcome	Interpretation	Indicated Action
R is not statistically significant and there is little change to b1, b2 and b3.	There is little correlation between X1, X2 and X3 and race, little or no disparate impact or proxy discrimination	None, utilize the model.

How Do We Interpret the Disparate Impact Analysis?

$$b_0 + b_1X_1 + b_2X_2 + b_3X_3 + \mathbf{b_4R_1} + e = y$$

Result: Proxy Discrimination

Outcome	Interpretation	Indicated Action
R is statistically significant and b1 has lost its statistical significance	X1 was largely a proxy for race and the original predictive value of X1 was spurious. **This is an example of proxy discrimination**	Remove X1 from the marketing, pricing, claims settlement or anti-fraud model.

How Do We Interpret the Disparate Impact Analysis?

$$b_0 + b_1X_1 + b_2X_2 + b_3X_3 + \mathbf{b_4R_1} + e = y$$

Result: Disparate Impact

Outcome	Interpretation	Indicated Action
R is statistically significant and has a large impact on the outcome, but b1, b2 and b3 remain largely unchanged and statistically significant	This is an example of disparate impact.	Are X1, X2 or X3 essential for the insurer's business purposes? Are there less discriminatory approaches available? Would eliminating a predictive variable significantly reduce the disparate impact but not materially affect the efficiency or productiveness of the model?

How Do We Interpret the Disparate Impact Analysis?

$$b_0 + b_1X_1 + b_2X_2 + b_3X_3 + \mathbf{b_4R_1} + e = y$$

Result: Some Proxy Discrimination, Some Disparate Impact

Outcome	Interpretation	Indicated Action
R is statistically significant, but b1, b2 and b3 remain statistically significant with different values from the original.	X1, X2 and X3 are correlated to race, but also predictive of the outcome, even after removing the variables' correlation to race. **This is an example of some proxy discrimination and some disparate impact.**	Depending on the significance of the racial impact, **utilize the model with the revised predictive variable coefficients, consider prohibiting a variable on the basis of equity or both.**

Disparate Impact Analysis Improves Cost-Based Pricing

There is a long history and many approaches to identifying and minimizing disparate impact in employment, credit and insurance. But, the general principle is to identify and remove the correlations between the protected class characteristic and the predictive variables.

$$b_0 + b_1X_1 + b_2X_2 + b_3X_3 + \mathbf{b_4R_1} + e = y$$

What if X1, X2 and X3 are not perfect proxies for Race, but still have high correlation? Then, the disparate impact analysis – and our simple model – removes that correlation and the remaining values for b1, b2 and b3 are the unique contributions of each predictive variable to explaining the outcome. The result is more – not less – accurate cost-based or risk-based analysis.

Why is it Reasonable and Necessary to Recognize Disparate Impact as Unfair Discrimination in Insurance?

1. It makes no sense to permit insurers to do indirectly what they are prohibited from doing directly. If we don't want insurers to discriminate on the basis of race, why would we ignore practices that have the same effect?

2. It improves risk-based and cost-based practices.

3. In an era of Big Data, systemic racism means that there are no "facially-neutral" factors.

Algorithms Learn the Bias Reflected in Data and Modelers

Advocates of algorithmic techniques like data mining argue that they eliminate human biases from the decision-making process. ***But an algorithm is only as good as the data it works with.*** *Data mining can inherit the prejudices of prior decision-makers or reflect the widespread biases that persist in society at large.* ***Often, the "patterns" it discovers are simply preexisting societal patterns of inequality and exclusion. Unthinking reliance on data mining can deny members of vulnerable groups full participation in society.***[2]

The fact that an insurer doesn't use race in an algorithm does not logically or factually result in no discrimination on the basis of race.

In fact, the only way to identify and eliminate the impacts of structural racism in insurance is to measure that impact by explicit consideration of race and other protected class factors.

[2] Barocas and Selbst

Why Test for Disparate Impact and Proxy Discrimination in All Aspects of Insurers' Operations?

Among the various parts of the insurance life-cycle – marketing, underwriting, pricing, claims settlement, antifraud – new data sources and complex algorithms for pricing currently get the most attention from regulators because in most states most insurers file personal lines rates. Data and algorithms used for marketing, in contrast, get little or no attention. ***Yet, it is the marketing function – and the new data sources and algorithms used in micro-targeting consumers – that has become the true gatekeeper for access to insurance.***

Consider the following quotes from 2005 to present. In 2005, in a meeting with investment analysts, the CEO of a major publicly-traded insurer was effusive about the benefits of the then relatively new use of consumer credit information – referred to as tiered pricing.

Tiered pricing helps us attract higher lifetime value customers who buy more products and stay with us for a longer period of time. That's Nirvana for an insurance company.

This year, we've expanded from 7 basic price levels to 384 potential price levels in our auto business.

Tiered pricing has several very good, very positive effects on our business. It enables us to attract really high quality customers to our book of business.

The key, of course, is if 23% or 20% of the American public shops, some will shop every six months in order to save a buck on a six-month auto policy. ***That's not exactly the kind of customer that we want.*** So, the key is to use our drawing mechanisms and our tiered pricing to find out of that 20% or 23%, to find those *that are unhappy with their current carrier, are* likely to stay with us longer, likely to buy multiple products and that's where tiered pricing and a good advertising campaign comes in.

Now fast forward to 2017, when the new CEO of that insurer told investment analysts:

> The insurer's "universal consumer view" keeps track of information on 125 million households, or 300 million-plus people, Wilson said.
>
> "When you call now they'll know you and know you in some ways that they will surprise you, and give them the ability to provide more value added, so we call it the trusted adviser initiative"

And just recently, the telematics subsidiary of this insurer pitched its ability to identify the most valuable customers in real time:

> Attract the most profitable drivers with telematics-based targeting
>
> Traditionally, insurance marketing has relied on demographic and behavioral data to target potential customers. While useful at a high level, these proxies fall short when it comes to considering customer value and retention. Now, you can reach the most profitable customers from the outset using the nation's first telematics-based marketing platform. . . . .
>
> Company intelligently layers driving score onto insurer campaign targeting criteria to purchase the ideal audience based on quartiles of driving risk. [The] Scored user receives a targeted offer via awareness and performance channels

Not to be outdone, another telematics data vendor announced a partnership with an auto manufacturer

> Insurers can harness the power of connected Hyundai vehicles as a new marketing channel to support the profitable growth of their behavior- or mileage-based programs. Discount Alert allows insurers to deploy personalized marketing offers directly to drivers through Hyundai's online owner portal and contains robust tools to anonymously segment ideal risk targets—ensuring your offers are only sent to qualified leads.

All of this begs the questions, what about consumers and businesses who don't have the wealth to provide the value sought by insurers? How do these strategies line up with public policies against discrimination on the basis of race and promoting widespread availability of insurance?

A Comprehensive Regulatory Approach to Addressing Systemic Racism in Insurance

1. <u>Affirm the Legal and Policy Framework for Unfair Discrimination</u>

This is the foundational activity of defining disparate impact and proxy discrimination and affirming such outcomes as unfair discrimination in insurance.

a. *Define Disparate Impact and Proxy Discrimination for insurance.*

b. *Require insurers to test for and eliminate proxy discrimination and minimize disparate impact.*

c. *Establish equity standards for minimizing disparate impact.*

   1. Seek approaches that reduce disparate impact without compromising efficiency of the algorithm; and

   2. Establish an equity/efficiency trade off of 20 to 1: For example, reduce algorithmic efficiency by 2% if disparate impact can be reduced by 40% or more.

Definitions

Disparate Impact: Use of a non-prohibited factor that causes disproportionate outcomes on the basis of prohibited class membership and that such disproportionate outcomes cannot be eliminated or reduced without compromising the risk-based framework of insurance.

Proxy Discrimination: Use of a non-prohibited factor that, due in whole or in part to a significant correlation with a prohibited class characteristic, causes unnecessary, disproportionate outcomes on the basis of prohibited class membership.

Or

*Proxy Discrimination: U*se of an external consumer data and information source, algorithm, or predictive model whose predictive capability is derived in substantial part from its correlation with membership in one or more of such protected classes.

Regulatory Guidance to Implement the Policy Framework

a. Guidance for insurers to test for disparate impact and proxy discrimination;

b. Guidance for insurers to report test results and actions taken in response to test results;

c. Guidance for safe harbors for insurers who follow regulatory guidance; and

d. Guidance to implement principles for Artificial Intelligence.

The Murder of George Floyd Raised Awareness of Systemic Racism How Did Insurer CEOs React?

"In the coming days, I encourage each of us to step outside of our comfort zones, seek to understand, engage in productive conversations and hold ourselves accountable for being part of the solution. We must forever stamp out racism and discrimination." Those are the words of Kirt Walker, Chief Executive Officer of Nationwide.

Floyd's death in Minneapolis is the latest example of "a broken society, fueled by a variety of factors but all connected by inherent bias and systemic racism. Society must take action on multiple levels and in new ways. It also requires people of privilege—white people—to stand up for and stand with our communities like we never have before," Those are the words of Jack Salzwedel, the CEO of American Family.

How Have the Insurer Trades – Particularly NAMIC and APCIA – Responded to the Insurer CEOs' Calls?

- Opposed the inclusion of "Consistent with the risk-based foundation of insurance, AI actors should proactively . . . avoid proxy discrimination against protected classes" in the NAIC Principles for Artificial Intelligence.

- Have opposed the application of disparate impact liability under the federal Fair Housing Act to home insurance.

- Supported the gutting of the U.S. Housing and Urban Development's disparate impact rule – despite pleas from several insurers to leave the rule alone in the aftermath of the murder of Black Americans at the hands of police.

- Pushed NCOIL to adopt a resolution opposing the CASTF White Paper because it suggested that regulators could ask insurers to show a rational relationship between new data sources and insurance outcomes.

How Have the Insurer Trades – Particularly NAMIC and APCIA – Responded to the Insurer CEOs' Calls? (con't)

- Opposed state bills to limit the impacts of credit-based insurance scores during a pandemic, citing insurers' need for "risk-based pricing," while supporting efforts to permit such deviations when insurers find it convenient – price optimization, consumer lifetime value.

- Sued regulators in NV and WA who sought temporary limits on the use of credit-based insurance scores disrupted by the pandemic and the CARES Act.

- Pushed NCOIL to adopt a definition of proxy discrimination that would block any efforts to identify and address disparate impact and proxy discrimination and shield insurers from any accountability for their practices.

NCOIL's "Definition" of Proxy Discrimination Must Be Rejected

At the urging of the P/C Trades, NCOIL recently adopted the following:

> For purposes of this Act, as well as for the purpose of any regulatory material adopted by this State, or incorporated by reference into the laws or regulations of this State, or regulatory guidance documents used by any official in or of this State, "Proxy Discrimination" means the **intentional** substitution of a neutral factor for a factor based on race, color, creed, national origin, or sexual orientation **for the purpose of discriminating** against a consumer **to prevent that consumer from obtaining insurance or obtaining a preferred or more advantageous rate due to that consumer's race, color, creed, national origin, or sexual orientation.**

At best, this action represents a profound misunderstanding of how systemic racism affects insurance. At worst, it is a conscious act of stopping insurance regulators and states from even attempting to address racial justice. The language memorializes insurer practices that indirectly discriminate on the basis of race, discourages insurers from examining such racial impact and restricts current regulatory efforts.

Consider Criminal History Scores

"TransUnion recently evaluated the predictive power of court record violation data (including criminal and traffic violations)

"Also, as court records are created when the initial citation is issued, they provide insight into violations beyond those that ultimately end up on the MVR—such as violation dismissals, violation downgrades, and pre-adjudicated or open tickets."

What is the likelihood that TU Criminal History Scores have a disparate impact against African-Americans? Consider policing records in Ferguson, Missouri.

US DOJ Investigation of the Ferguson Police Department

Ferguson's approach to law enforcement both reflects and reinforces racial bias, including stereotyping. ***The harms of Ferguson's police and court practices are borne disproportionately by African Americans, and there is evidence that this is due in part to intentional discrimination on the basis of race.***

Ferguson's law enforcement practices overwhelmingly impact African Americans. Data collected by the Ferguson Police Department from 2012 to 2014 shows that African Americans account for 85% of vehicle stops, 90% of citations, and 93% of arrests made by FPD officers, despite comprising only 67% of Ferguson's population.

US DOJ Investigation of the Ferguson Police Department (2)

FPD appears to bring certain offenses almost exclusively against African Americans. For example, from 2011 to 2013, African Americans accounted for 95% of Manner of Walking in Roadway charges, and 94% of all Failure to Comply charges.

Our investigation indicates that this disproportionate burden on African Americans cannot be explained by any difference in the rate at which people of different races violate the law. Rather, our investigation has revealed that these disparities occur, at least in part, because of unlawful bias against and stereotypes about African Americans.

Practices That Raise Concerns About Disparate Impact and Proxy Discrimination on the Basis of Race

Price Optimization and Consumer Lifetime Value Scores

By definition, these algorithms used by insurers utilize non-cost factors to differentiate among consumers and the factors and data reflect bias against communities of color.

Credit-Based Insurance Scores

The consumer credit information factors used in CBIS are highly correlated with race. The Missouri Department of Insurance found that the single best predictor of the average CBIS in a ZIP Code was minority population.

Criminal History Scores

Here, the problem is not just the legacy of historical discrimination, but ongoing discrimination in policing and criminal justice.

Why Do Efforts to Address Discrimination on the Basis of Race Require Explicit Consideration of Race?

New York Times, August 10, 2015: Algorithms and Bias: Q. and A. With Cynthia Dwork

Q: Some people have argued that algorithms eliminate discrimination because they make decisions based on data, free of human bias. Others say algorithms reflect and perpetuate human biases. What do you think?

A: Algorithms do not automatically eliminate bias. . . .Historical biases in the . . .data will be learned by the algorithm, and past discrimination will lead to future discrimination.

Fairness means that similar people are treated similarly. ***A true understanding of who should be considered similar for a particular classification task requires knowledge of sensitive attributes, and removing those attributes from consideration can introduce unfairness and harm utility.***

Steve Bellovin, “Yes, ‘algorithms’ can be biased. Here’s why. A computer scientist weighs in on the downsides of AI.”[3]

This is what's important: machine-learning systems—"algorithms"—produce outputs that reflect the training data over time. If the inputs are biased (in the *mathematical* sense of the word), the outputs will be, too. Often, this will reflect what I will call "sociological biases" around things like race, gender, and class.

One thing is to exercise far more care in the selection of training data. Failure to do that was the likely root cause of Google Images labeling two African-Americans as gorillas. Sometimes, fixing the training data can help.

Of course, this assumes that developers are even aware of the bias problem. Thus, another thing to do is to test for biased outputs—and some sensitive areas, such as the criminal justice system, simply do not use these kinds of tools.

[3] https://arstechnica.com/tech-policy/2019/01/yes-algorithms-can-be-biased-heres-why/

There are several reasons to be wary of the "algorithmic" approach. One reason is that people put too much trust in computer output. Every beginning programmer is taught the acronym "GIGO:" garbage in, garbage out. To end users, though, it's often "garbage in, gospel out"—if the computer said it, it must be so. (This tendency is exacerbated by bad user interfaces that make overriding the computer's recommendation difficult or impossible.) We should thus demand less bias from computerized systems precisely to compensate for their perceived greater veracity.

The second reason for caution is that computers are capable of doing things—even bad things—at scale. There is at least the perceived risk that, say, computerized facial recognition will be used for mass surveillance. Imagine the consequences if a biased but automated system differentially misidentified African-Americans as wanted criminals. Humans are biased, too, but they can't make nearly as many errors per second.

Our test, then, should be one called disparate impact. "Algorithmic" systems should be evaluated for bias, and their deployment should be guided appropriately. Furthermore, the more serious the consequences, the higher the standard should be before use.

"The Real Reason Tech Struggles with Algorithmic Bias"[4]

These are mistakes made while trying to do the right thing. But they demonstrate why tasking untrained engineers and data scientists with correcting bias is, at the broader level, naïve, and at a leadership level insincere.

No matter how trained or skilled you may be, it is 100 percent human to rely on cognitive bias to make decisions. Daniel Khaneman's work challenging the assumptions of human rationality, among other theories of behavioral economics and heuristics, drives home the point that human beings cannot overcome all forms of bias. But slowing down and learning what those traps are—as well as how to recognize and challenge them—is critical. As humans continue to train models on everything from stopping hate speech online to labeling political advertising to more fair and equitable hiring and promotion practices, such work is crucial.

[4] Yael Eisenstat at https://www.wired.com/story/the-real-reason-tech-struggles-with-algorithmic-bias/

Insurers Don't Collect Applicant's Race – How Can an Actuary Get Data on Race to Perform a Disparate Impact Analysis?

1. Assign a racial characteristic to an individual based on racial characteristic of a small geographic area – Census data at the census block level.

2. Utilize the Bayesian Improved Surname Geocoding Method, based on census geography and surname data. [5]

3. Reach out to data brokers and vendors for a new data service.

[5] See Consumer Financial Protection Bureau, "Using publicly available information to proxy for unidentified race and ethnicity." https://www.consumerfinance.gov/data-research/research-reports/using-publicly-available-information-to-proxy-for-unidentified-race-and-ethnicity/ and Yin Zhang, "Assessing Fair Lending risks Using Race/Ethnicity Proxies.

Ethical Algorithms -- Sources

Pauline T. Kim, "Auditing Algorithms for Discrimination"
https://www.pennlawreview.com/online/166-U-Pa-L-Rev-Online-189.pdf
Claire Whitaker, "Ethical Algorithms"
https://www.kdnuggets.com/2019/03/designing-ethical-algorithms.html
Erin Russel, "The Ethical Algorithm"
https://www.cognitivetimes.com/2019/01/the-ethical-algorithm/
Barocas and Selbst
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2477899
Kroll, et al, "Accountable Algorithms:
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2765268
Virginia Eubanks, *Automating Inequality: How High Tech Tools Profile, Police and Punish the Poor*
Selbst and Barocas, "The Intuitive Appeal of Explainable Machines
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3126971
Levy and Barocas, "Designing Against Discrimination in Online Markets
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3084502
New York Times, "Algorithms and Bias, Q and A with Cynthia Dwork," 10 August 2015
https://www.nytimes.com/2015/08/11/upshot/algorithms-and-bias-q-and-a-with-cynthia-dwork.html
Martin, Kirsten E. M., What Is an Ethical Algorithm (And Who Is Responsible for It?) (October 21, 2017). Available at SSRN:
https://ssrn.com/abstract=3056692 or http://dx.doi.org/10.2139/ssrn.3056692
Kirsten Martin, "Ethical Implications and Accountability of Algorithms"
http://kirstenmartin.net/wp-content/uploads/2013/11/Martin-JBE-Ethics-and-Accountability-of-Algorithms.pdf
Kirsten Martin, DATA AGGREGATORS, BIG DATA, & RESPONSIBILITY ONLINE
http://kirstenmartin.net/wp-content/uploads/2013/11/AAPOR-Martin-Info-Value-Chain-v2.pdf
AIandBigData:Ablueprintforahumanrights,socialandethicalimpactassessmentAlessandroMantelero

https://reader.elsevier.com/reader/sd/pii/S0267364918302012?token=3836947F0CAD3C145A1F273E3CBE6C38F67E777DD7E4D590548F481916130DAACA8D57BED4667BD1FE1F4D8FC80E7C56

Catron, Cindy

From: Noonan, Kay
Sent: Monday, June 7, 2021 11:52 AM
To: Catron, Cindy
Subject: Concern/Complaint about insurer practices from a 20 year insurance professional

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From: Jamal Mahmood, CFP(r), CLU(r), RICP(r) <jamal@msfsolutions.com>
Sent: Friday, April 30, 2021 1:32 PM
Subject: Concern/Complaint about insurer practices from a 20 year insurance professional

I am writing to you regarding a concern that I have had for a while, one which bothers me more and more over time. I am hoping you can route it to the correct person within your organization.

My concern is regarding underwriting practices I have encountered across life insurance companies when it comes to foreign travel.

In my experience, insurance companies do not have very sophisticated criteria at all when it comes to screening for foreign travel among life insurance applicants.

Most companies ask "Do you have any plans to leave the United States for travel or residence?" or some variation of that question. Some will ask a trickier variation: "Do you anticipate travel?" which is a broader question that covers more "grey areas."

In any event, most insurance companies will be very strict when it comes to denying coverage for any insured who mentions that they may be traveling to countries that have travel advisories.

I would argue and request that the NAIC consider that perhaps this practice is unfairly discriminatory on racial and ethnic lines. My own experience is a case in point.

Many of my clients hail from Pakistan, originally (that is where my ancestors are from, and thus Pakistani Americans are my natural market). Pakistan is, understandably, a "D" country for most insurance companies. It is not a place any American citizen in their right might would travel to for tourism, or any other discretionary reason. But the implication of the way insurance companies treat such a situation is that it is very difficult for ANYONE from Pakistan to obtain life insurance.

The reason is because a good many people from Pakistan have family there. So when I ask them if they have plans to travel, I am often met with a confused response that basically says "Well… I have no plans to go to Pakistan but at some point I probably will go…" meaning, there is no reason for them to go, but at some point, maybe their nephew will get married, or a parent will get sick, and then they would go, because it's their home…

Insurance companies have told me many times that I should just say "we have no plans" to travel in such situations, because there are indeed no "plans." But this feels somewhat uncomfortable, because conscientious clients would prefer to say "I have no plans to travel, but there is a possibility I may go to Pakistan at some point." This would be especially appropriate if the question asks if travel is *anticipated*. But even the slightest nuance is intolerable when it comes to this- the word "Pakistan" on an application as a possible travel destination is an automatic decline.

People born in America do not have this conflict. Even if they are from the toughest parts of Oakland, Detroit, or Brooklyn, there is no "risk" to travel within the United States. Yet the entire country of Pakistan is considered one big

danger zone. It is as if merely the possibility that one might consider traveling to Pakistan increases one's mortality risk. This is completely illogical, and it discriminates against anyone who is from there.

My suggestion and request:

Please consider a guideline that states that regardless of a country's status, an insured's possible travel to that country CANNOT be considered grounds for denying coverage to that person. A valid alternative could be an exclusion for death that occurs within that country, or an automatic "standard" rating. Perhaps it could be combined with de minimis travel allowances, or allowances for insureds with family ties to the country in question.

The simplified way that insurance companies handle it at present may be convenient for them, and it does not affect probably 90% or more of applicants, anyone who hails from a Western country. But people from Pakistan, from the Middle East, from Africa, all of them will face this problem that I am speaking of here.

Thank you for your consideration of this matter.

Sincerely,

Jamal Mahmood, CFP®, CLU®, RICP®

Main Street Financial Solutions, LLC · 155 Pompton Avenue, Suite 108 · Verona, NJ 07044
Office: 973-239-0900 · Direct: 973-433-9745
Fax: 973-233-5507 · Conference Line: 425-436-6200
Schwab Direct: (800) 515-2157 (8am-8pm Eastern)

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MCINTYRE | LEMON

McIntyre & Lemon, PLLC
1015 15th Street, NW, Suite 1025
Washington, D.C. 20005
Tel: 202-659-3900

May 21, 2021

Kay Noonan, Esq.
General Counsel
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64105

Re: NAIC Special Committee on Race & Insurance: Request for Comments-2021 Charges

Dear Ms. Noonan:

Pursuant to the Special Committee on Race and Insurance's request for comments on its proposed 2021 Charges, we wish to comment on behalf of our client, the National Premium Finance Association (NPFA) with respect to the following Charge:

- Charge H(6) regarding Workstream #3 (the Property and Casualty line of business): "Continue research and analysis related to insurance access and affordability issues, including: Steps that can be taken to mitigate the impact of residual markets, premium financing and nonstandard markets on disadvantaged groups."

The NPFA is a national trade association representing premium finance companies. The association is supportive of the NAIC's efforts to research, review and develop solutions regarding diversity, equity and inclusion and issues surrounding access and affordability of insurance to disadvantaged individuals and underserved communities. Our firm has been engaged in following all aspects of the Special Committee's work and that of its Workstreams, since the inception of this

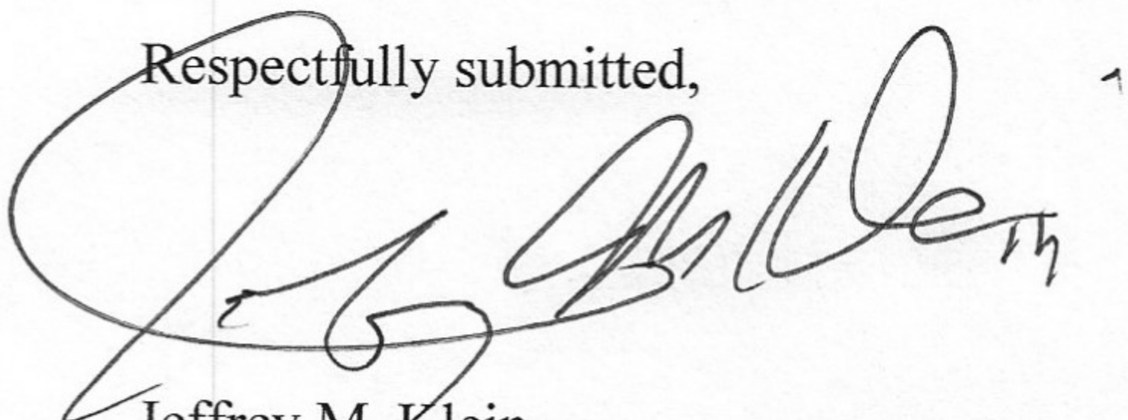
important project. We are actively engaged in the issue as well at the National Conference of Insurance Legislators (NCOIL).

With regard to premium financing, premium finance loans provide short-term financing to help businesses and consumers purchase insurance for property, casualty, and liability risk. Many small businesses, sole proprietors, and individuals cannot afford the upfront premium expense, lack access to traditional sources of credit, and therefore need access to insurance premium financing in order to obtain adequate coverage.

On an annual basis, the premium finance industry provides loans to finance approximately $45 billion in premiums for more than 1.5 million policies. The financed commercial insurance coverage is especially critical to enabling important participants in the U. S. economy to operate and compete in their respective markets.

While we have no specific comment on the language of the Charge itself at this time, we wanted the Special Committee to be aware of our status and interest. We stand ready to provide insight, relevant input and assistance at the appropriate time, through testimony and/or submission of materials, with regard to the premium finance mechanism and the services provided by premium finance companies.

Respectfully submitted,



Jeffrey M. Klein

Of Counsel

FROM THE NAIC CONSUMER REPRESENTATIVES

To: Special (EX) Committee on Race and Insurance
Kay Noonan

Date: May 14, 2021

Re: Comments on 2021 Proposed Charges

On behalf of the undersigned NAIC consumer representatives, thank you for your leadership in convening the Special (EX) Committee on Race and Insurance. The Special Committee has served as a powerful forum to help keep regulators and industry focused on addressing systemic racism, bias, and discrimination and increasing diversity and inclusion in the insurance sector. The Special Committee should continue to play this role going forward in addition to ensuring that the NAIC takes concrete actions and adopts meaningful changes. An Executive-level committee will remain crucial to ensuring that state insurance departments and the NAIC develop and adopt consistent policies throughout the organization.

As you know, racial inequities are deeply entrenched and have been laid bare at a time of renewed national focus on systemic racism, police brutality, and violence against people of color, especially Black and Asian Americans. At the same time, the COVID-19 pandemic has disproportionately affected communities of color and underscored that inequities in our country's health care and economic system are structural and heightened during a public health crisis.[1]

Addressing racial and ethnic disparities—and the long-standing structural barriers that contribute to these disparities—demands a comprehensive approach. This includes a review of and response to systemic racism, bias, and discrimination in all lines of insurance and across all aspects of the insurance benefit design, marketing, consumer information, purchasing, pricing, and claims processes.

The Special Committee's proposed charges for 2021 are a strong step forward but should be more directive and specific.[2] Strong charges from the Special Committee are necessary to ensure that its workstreams and the NAIC letter committees, working groups, subgroups, and task forces act quickly and take meaningful action. This action is long overdue to further our shared commitment to addressing racial inequities in insurance markets.

---

[1] The NAIC consumer representatives previously issued COVID-19-specific recommendations for state regulators. NAIC Consumer Representatives, *Protecting Consumers During COVID-19: Recommendations for State Policymakers from the NAIC Consumer Representatives* (Aug. 2020).

[2] Center for Economic Justice, Comments to the NAIC (EX) Committee on Race and Insurance (Apr. 10, 2021).

As you proceed with this work, we encourage you to adopt actionable and specific charges coupled with specific timeframes to meet the urgency of the moment. The nation's reckoning with systemic racism and embedded discrimination is very much ongoing, and we appreciate the Special Committee's efforts to keep its work simultaneously broad and directed. In light of that, we urge the Special Committee to establish a framework for transparently setting and meeting milestones for each workstream and the letter committees.

Among the proposed charges, we urge the Health workstreams to especially prioritize 1) enhanced data reporting and record-keeping requirements for demographic data based on race, ethnicity, language, sexual orientation, gender identity, and disability status; and 2) the use of plan network standards to advance health equity. As a starting point, we urge the NAIC to develop white papers on these topics that summarize the existing literature, identify best practices, and discuss the need for consumer guardrails (such as privacy protections and training requirements). The exercise of developing white papers on these two issues will help inform stakeholder approaches, provide guidance to industry, and serve as an evergreen NAIC resource upon which to build a strong foundation.

As the Special Committee, workstreams, and other parts of the NAIC turn to this work in earnest, we encourage you to think of the consumer representatives as a resource. Many of us have expertise in issues that you will be considering related to health disparities, discrimination, data collection, language access, and more. We also intend to release new research on the insurance-related needs of consumers of color during the Fall 2021 meeting. We believe this type of data is critical to informing your efforts at the Special Committee and throughout the NAIC.

Thank you again for your leadership, and we look forward to working with state regulators and NAIC staff on ensuring that the Special Committee's efforts are successful. Millions of consumers are depending on it.

Sincerely,

Jamille Fields Allsbrook
Birny Birnbaum
Ashley Blackburn
Brendan Bridgeland
Courtney Bullard
Bonnie Burns
Lucy Culp
Deborah Darcy
Yosha Dotson
Eric Ellsworth
Justin Giovannelli
Marguerite Herman
Anna Schwamlein Howard
Janay Johnson
Katie Keith
Karrol Kitt
Ken Klein
Rachel Klein
Peter Kochenburger
Natasha Kumar
Sarah Lueck
Gwendolyn Roberts
Majette
Dorianne Mason
Erin Miller
Carl Schmid
Karen Siegel
Matthew Smith
Andrew Sperling
Harry Ting
Wayne Turner
Jackson Williams
Silvia Yee

May 13, 2021

Commissioner David Altmaier, Co-Chair
Director Dean Cameron, Co-Chair
NAIC Special Committee on Race and Insurance
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500 Kansas City, MO 6410

Via email to: Kay Noonan, KNoonan@NAIC.org

RE: NAIC Special (EX) Committee on Race and Insurance - Proposed 2021 Charges

Dear Commissioner Altmaier and Director Cameron:

Thank you for allowing the National Association of Insurance and Financial Advisors (NAIFA) to comment on the proposed charges for the Special Committee (EX) on Race and Insurance. Founded in 1890, NAIFA represents the interests of insurance and financial services professionals across the country. A key component of NAIFA's mission is to serve as an industry expert on diversity, equity, and inclusion (DEI) by attracting and nurturing members from diverse backgrounds. NAIFA remains committed to this mission and has recently undertaken several leading diversity, equity, and inclusion initiatives:

- Creating a Diversity, Equity, and Inclusion Council, which provides guidance, advice, and support to diversity initiatives that will in turn create the cultural shifts as outlined in NAIFA's 2025 Strategic Plan.

- Hosting diversity symposiums and webinars that discuss the hard issues, such as barriers to minority advisors' success, and how our members can be part of the solution.

- Developing a NAIFA Diversity Champion Award, which recognizes the exceptional efforts of NAIFA members who seek to promote the full and equal participation of diverse people in the insurance and financial services industry.

- Developing position papers and research reports featuring thought leadership on recruiting minority advisors and providing helpful and culturally sensitive strategies or selling to diverse markets.

- Creating a DEI-focused, consumer-facing website that provides tools and resources that help financial advisors reach and serve underserved and minority communities.

NAIFA continues to make these initiatives a top priority both internally and externally. We strive to help financial professionals promote and advance diversity and inclusion programs within their organizations. NAIFA greatly appreciates being able to continue to work with the Committee on all charges as a part of our commitment. We are particularly encouraged to work with the committee on the following charges:

- Charge **H.1.** *to continue research and analysis related to insurance access and affordability issues, including: the marketing, distribution, and access to life insurance products in minority communities, including the role that financial literacy plays*.
  - We see opportunities to address these issues by removing the barriers that stand in the way for minorities to enter the producer workforce. We must work with managers, recruiters, and executives to hire, develop, and promote candidates from all backgrounds. The insurance industry should look like the marketplace it represents, which is a diverse one. We know that typically underserviced communities are more receptive to agents and advisors who come from similar backgrounds and can relate to and understand their life circumstances.

- **H.7.** *to make referrals for the development of consumer education and outreach materials as appropriate.*
  - We strongly support the notion of financial security for all and understand that the expansion of financial education and literacy are critical. Insurance agents and producers play an enormous role in educating consumers. NAIFA is developing tools to encourage its members to take into their communities and help connect the importance of insurance and financial security. We look forward to contributing our insights and expertise to this effort.

- **I.2.**, *the availability of producer licensing exams in foreign languages, steps exam vendors have taken to mitigate cultural bias, and the number and locations of producers by company compared to demographics in the same area.*
  - NAIFA has recommended to expand on this charge by addressing the need for access to producer licensing education and exams in languages other than English. We feel this is an important component to increasing diversity among producers and encouraging a workforce to serve diverse consumers and communities.

Again, we fully appreciate the opportunity to comment on the proposed charges and continue working with the Committee on these important issues. We hope that the Committee will strive for an open and transparent process as we continue to collaborate on this most important issue.

Sincerely,

Maeghan Gale
NAIFA Policy Director

2021 Proposed Charges

SPECIAL (EX) COMMITTEE ON RACE AND INSURANCE

The **Special (EX) Committee on Race and Insurance** will:

A. Serve as the NAIC's coordinating body on identifying issues and potential solutions related to:

1. ~~(i)~~ race, diversity and inclusion within the insurance sector;

2. ~~(ii)~~ race, diversity, and inclusion in access to ~~the insurance sector and~~ insurance products; and

3. ~~(iii)~~ practices within the insurance sector that harm~~potentially disadvantage~~ people of color and/or historically underrepresented groups.

B. Coordinate with existing groups such as the Big Data and Artificial Intelligence (EX) Working Group and the Casualty Actuarial and Statistical (C) Task Force on any efforts to determine whether ~~and encourage those groups to continue their work in~~ predictive modeling, price algorithms and artificial intelligence (AI) unfairly discriminate on the basis of ~~, with a particular focus on how~~ race and/or membership in a historically underrepresented group~~is impacted~~.

C. (Workstream One) Continue research and analysis to identify issues and develop specific recommendations on action steps that state insurance regulators and companies can take to improve the level of diversity and inclusion in the industry, including:

1. Seek additional engagement from stakeholders and states to understand the efficacy of diversity-related programs, how companies measure their progress and what state insurance regulators can do to support or amplify these efforts.

2. Collect input from stakeholders and states regarding whether there are ~~on~~ existing gaps in available industry diversity-related data.

D. (Workstream Two) In coordination with the Executive (EX) Committee, receive reports on NAIC and state regulator diversity, equity and inclusion (DE&I) efforts. Serve as the coordinating body for state requests for assistance from the NAIC related to DE&I efforts.

E. (Workstream Two) Research statistics and best practices among state insurance departments on DE&I efforts and develop public forums for sharing data and findings across ~~relevant information among~~ states.

F. Continue research and analysis of insurance, legal and regulatory approaches to determining whether ~~addressing~~ unfair discrimination is present, specifically defining "proxy discrimination," "race," and "historically underrepresented group" ~~and disparate impact, by defining the terms~~ and determining whether additional ~~appropriate~~ steps are appropriate~~to address~~, including:

1. (Workstream Four) The impact of traditional life insurance underwriting on minority populations, considering the relationship between mortality risk and disparate impact.

2. (Workstream Three) Developing a process for analysis ~~analytical and regulatory tools~~ to assist the industry and state insurance regulators in determining whether unfair discrimination exists including issues related to:

Commented [TC1]: Issues to be addressed should be identified.

Commented [TC2]: For consistency of wording.

Commented [TC3]: Duplicative of 1.

Commented [TC4]: Removing potential provides clarity

Commented [TC5]: Appropriate for the committees to work together on the threshold questions of identification of problems

Commented [TC6]: Impact is ill-defined here. Language added to provide more clarity

Commented [TC7]: Issues to be addressed should be identified.

Commented [TC8]: There have been states who have issued regulations and reporting requirements in this space – we recommend gathering their perspectives as well on how those efforts are working

Commented [TC9]: We believe this would be a constructive role for regulators to play

Commented [TC10]: Specifying who will provide data helps for clarity here, as well as the first step being identification of issues

Commented [TC11]: There has been an indicated desire expressed to look at this area as well

Commented [TC12]: Additions we believe will improve the process

Commented [TC13]: Issues to be addressed should be identified first.

Commented [TC14]: These definitions will be critical to future discussions.

Commented [TC15]: Some commenters to date have indicated a desire to expand the understanding of race due to some of the complications mentioned in the preceding comment – the addition and definition of historically underrepresented group could get at the committee's stated goals if done correctly.

Commented [TC16]: Disparate impact is an already defined legal term that has been addressed by the US Supreme Court – creating an insurance code specific definition and treatment is unnecessary.

Commented [TC17]: We recommend a process and analysis rather than specific tools.

a. The use of income~~socioeconomic variables~~.

b. The intentional use of ~~Identifying~~ proxy variables for race.

~~c. Correlation vs. causation.~~

~~d. Disparate impact considerations.~~

~~e~~c. Use of third-party data.

~~f~~d. Appropriateness of data such as criminal convictions~~history~~.

G. (Workstreams Three, Four and Five) ~~Consider enhanced data reporting and record-keeping requirements across product lines to identify race and other sociodemographic factors of insureds.~~ Consider a data call to identify resources and products sold in specific ZIP codes to identify potential geographic barriers to access.

H. Continue research and analysis related to insurance access and affordability issues, including:

1. (Workstream Four) The marketing, distribution and access to life insurance products in minority communities, including the role that financial literacy plays.

2. (Workstream Four) Disparities in the number of cancellations/rescissions among minority policyholders.

3. (Workstream Five) Measures to advance equity through lowering the cost of health care and promoting access to care and coverage, with specific focus on measures to remedy impacts on people of color, low income and rural populations, and historically marginalized groups, such as the LGBTQ+ community, individuals with disabilities, and Alaska Native and other Native and Indigenous people.

4. (Workstream Five) Examination of the use of network adequacy and provider directory measures (such as provider diversity, language and cultural competence) to promote equitable access to culturally competent care.

5. (Workstream Five) Conduct additional outreach to educate consumers and collect information on health and health care complaints related to discrimination and inequities in accessing care.

6. (Workstream Three) ~~Steps that can~~Whether steps need to be taken to mitigate the impact of residual markets, premium financing and nonstandard markets on historically underrepresented ~~disadvantaged~~ groups.

7. Make referrals for the development of consumer education and outreach materials as appropriate.

I. Direct NAIC and Center for Insurance Policy and Research (CIPR) staff to conduct necessary research and analysis, including:

1. (Workstream Three) The status of studies concerning the affordability of auto and homeowner's insurance, including a gap analysis of what has not been studied.

Commented [TC18]: Tried to provide a term that is a more measurable quantity.

Commented [TC19]: We recommend these changes in line with the definition of proxy discrimination

Commented [TC20]: All rating variables are correlative, not causal. A causality requirement is an impossible threshold for any rating variable and should not be part of this or any insurance regulatory discussion.

Commented [TC21]: Disparate impact is an already defined legal term that has been addressed by the US Supreme Court – creating an insurance code specific definition and treatment is unnecessary.

Commented [TC22]: This is an area ripe for excellent discussions; it is important to note that insurers have no input into criminal history data; they are end-users of information provided by the government.

Commented [TC23]: This sort of data collection will be extremely difficult and wildly unpopular with consumers

Commented [TC24]: We believe these changes would help clarify and ultimately provide the most useful framework

Commented [TC25]: We recommend the identification of problems to begin the process

Commented [TC26]: Historically underrepresented is preferable to "disadvantaged"

2. (Workstream Three) The availability of producer licensing exams in foreign languages, ~~steps exam vendors have taken to mitigate cultural bias~~, and the number and locations of producers by company compared to population ~~demographics~~ in the same area.

3. (Workstream Five) Aggregation of existing research on health care disparities and collection of insurance responses to the COVID-19 pandemic and its impact across demographic populations.

Commented [TC27]: Insurance codes that producers are tested on are laws and regulations – is the more appropriate question here whether the laws and regulations have a cultural bias?

Commented [TC28]: The access question is likely better studied using population data, not demographic data

LIFE INSURANCE AND ANNUITIES (A) COMMITTEE – NEW CHARGES

The **Accelerated Underwriting (A) Working Group**, as part of its ongoing work to consider the use of external data and data analytics in accelerated life underwriting, will include an assessment of and recommendations, as necessary, regarding the impact of accelerated underwriting on minority populations.

HEALTH INSURANCE AND MANAGED CARE (B) COMMITTEE – NEW CHARGES

The **Health Insurance and Managed Care (B) Committee** will:

A. Respond to inquiries from the U.S. Congress (Congress), the White House and federal agencies; analyze policy implications and the effect on the states of proposed and enacted federal legislation and regulations, including, where appropriate, an emphasis on equity considerations and the differential impact on underserved populations; and communicate the NAIC's position through letters and testimony, when requested.

The **Mental Health Parity and Addition Equity Act (MHPAEA) (B) Working Group** of the Regulatory Framework (B) Task Force will develop model educational material for state departments of insurance (DOIs) and research disparities in and interplay between mental health parity and access to culturally competent care for people of color and other underrepresented groups.

The **Health Innovations (B) Working Group** will evaluate mechanisms to resolve disparities through improving access to care, including the efficacy of telehealth as a mechanism for addressing access issues; the use of alternative payment models and value-based payments and their impact on exacerbating or ameliorating disparities and social determinants of health; and programs to improve access to historically underserved communities.

MARKET REGULATION AND CONSUMER AFFAIRS (D) COMMITTEE – NEW CHARGES

The **Producer Licensing (D) Task Force** will receive a report from on the availability of producer licensing exams in foreign languages, the steps exam vendors have taken to mitigate cultural bias, and the number and location of producers by company compared to demographics in the area.

NAMIC®
NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES

317.875.5250 | [F] 317.879.8408
3601 Vincennes Road, Indianapolis, Indiana 46268

202.628.1558 | [F] 202.628.1601
20 F Street N.W., Suite 510 | Washington, D.C. 20001

May 14, 2021

David Altmaier, Co-Chair
Dean Cameron, Co-Chair
Special (EX) Committee on Race and Insurance
c/o Kay Noonan, General Counsel – knoonan@naic.org
1100 Walnut St, Suite 1500
Kansas City, MO 64106-2197

Re: Notice of Meeting of Special (EX) Committee on Race and Insurance

Dear Co-Chairs and Committee Members:

On behalf of the National Association of Mutual Insurance Companies (NAMIC),[1] thank you for the opportunity to provide supplemental comments on the committee's new draft charges released on April 7, 2021. NAMIC remains engaged, ready, and willing to discuss and work on any and all proposals as they are developed. NAMIC and NAMIC's members remain adamantly opposed to discrimination on the basis of race and unfair discrimination in general, and we support legislative and regulatory policies to prevent these practices.

These supplemental comments are meant to build on our letter of April 9 and continue important discussions by providing additional suggestions for consideration, raise questions about other presentations made to the committee, and encourage the committee to review recent academic work that can further inform the committee's efforts. Additionally, we thank Director Fox for her invitation to provide specific recommended language during the April 12 meeting; to be responsive to that request, we have attached an appendix with specific recommended changes to the language in the proposed charges for the committee's consideration.

Charges Focused on the Insurance Talent Pipeline and Suggested Action

We are very supportive of the charges related to enhancing the insurance talent pipeline for both the industry and regulatory communities. Attracting new and diverse students and professionals to help confront the impending

[1] The National Association of Mutual Insurance Companies is the largest property/casualty insurance trade group with a diverse membership of nearly 1,500 local, regional, and national member companies, including seven of the top 10 property/casualty insurers in the United States. NAMIC members lead the personal lines sector representing 66 percent of the homeowner's insurance market and 53 percent of the auto market.

talent crisis in insurance is an existential problem we must all face together – across our industry the average age is nearly 60, more than a quarter of workers are expected to retire in the next few years, and employee retention is a rapidly growing challenge across all our business operations. Moving forward, it will be critical to identify ways to invest in future insurance professionals from the classroom to the boardroom. Only by investing in educational programs, scholarships, internships, technological training, and by building inclusive corporate and department cultures will we remain viable as a career choice for future generations.

We appreciate the committee's leadership and look forward to partnering with you on the important work ahead related to charges C, D, and E. Among other ongoing efforts in this area, NAMIC has developed a Talent Gap resource center[2] and a Scholarship Program that has awarded more than $235,000 to recipients since 2012 through our Mutual Insurance Foundation; we encourage the NAIC to pursue these kinds of efforts focused on fostering opportunities for students from diverse backgrounds. Building on the tremendous success of the NAIC's International Fellows Program, the development of a similar program with internship opportunities at DOI's for current students to gain experience and exposure to insurance regulation can help address staffing challenges in an environment where fewer than 4% of millennials would consider insurance as a career, in part because of a perceived lack of inclusivity.[3] We also support increased NAIC and industry engagement with organizations like Gamma Iota Sigma and participation in programs like Invest or the Dive-In Festival for Diversity and Inclusion in Insurance.[4] Only through intentional and concrete steps can we address the personnel challenges facing our industry together.

Questions Regarding Charges that Focus on Outcomes or Undermine Risk-Based Pricing

Charges F2 and G regarding unfair discrimination and enhanced data collection are focused on socioeconomic and sociodemographic factors, and both appear to be rooted in outcome-oriented analysis rather than the fundamental insurance principle of risk-based pricing.

Risk-based pricing is the core principle underlying the modern insurance industry. To accept risk efficiently and responsibly, insurers must assess, select, classify, and price risks for any given policy as accurately as possible. Insurers constantly analyze and adjust their risk assessment, classification, selection, and ratemaking standards to better compete in the marketplace and to stay in compliance with shifting state laws and regulations, which prohibit rates that are inadequate, excessive, or unfairly discriminatory.

---

[2] https://www.namic.org/resources/talentgap/industry
[3] https://riskandinsurance.com/future-of-insurance-talent-gap/
[4] https://diveinfestival.com/

While every company uses different rating variables and evaluates them differently, there is broad agreement that factors should be objective, actuarially sound, and have a credible, statistically compelling correlation to expected losses and expenses. There is also agreement and existing law that race, ethnicity, national origin, religion, income, and literacy are among applicant and policyholder characteristics that may never be considered. Because factors are correlative, the more information an insurer has, the more accurately it will be able to assess the likelihood of a loss. The inverse is also true: less information makes accurately assessing the likelihood of a loss more difficult.

Responsible risk-based pricing requires a balanced approach dedicated to accuracy – being too aggressive with risks means greater than expected claims will compromise a company's financial health, while being too conservative means a company won't be able to compete in the market. This balance ultimately benefits consumers as it keeps markets well populated with companies competing for their business, offering coverage for more consumers with downward pressure on rates while avoiding problems of adverse selection and moral hazard that would result in higher costs.

Recommended Regulatory Action to "de-bias" Predictive Models Based on Outcomes Would Undermine Risk-Based Pricing

Contrary to representations made to this committee and the NAIC's Consumer Liaison committee during the most recent virtual National Meeting, a proposal and equation put forth by the Center for Economic Justice for "de-biasing" insurers' predictive models to eliminate correlations between protected classes and predictive variables is not a viable solution. The proposal is strikingly similar to a process described by Professors Devin Pope and Justin Sydnor in a 2011 article[5], praised by Professors Anya Prince and Daniel Schwarcz in their 2018 article recently presented to the NCOIL Committee on Race and Underwriting in Insurance.[6] The authors' approach to eliminate proxy effects while maintaining predictive accuracy rather than banning variables outright is admitted by those authors to be theoretical in nature and acknowledged to reduce or compromise rating accuracy.

While appealing on its face, the claim that such an effort would somehow "improve" risk-based pricing is completely unsubstantiated; the methodology has not been tested, subjected to peer review, or gained any level of acceptance in regulating insurance practices. Such an approach cannot be assumed to be meaningfully transferable to insurance pricing; variables are never perfect, nor are their predictive powers eliminated by the

[5] *Implementing Anti-Discrimination Policies in Statistical Profiling Models*, American Economic Journal: Economic Policy 3 (August 2011): 206-231.

[6] *Proxy Discrimination in the Age of Artificial Intelligence and Big Data*, Iowa Law Review, Vol. 105, p.1314.

presence of other factors. Instead, predictive powers are shared or divided among variables, and the addition of new variables can change both the size and the sign of other coefficients. To illustrate, if individuals of a certain protected class drive a higher percentage of vehicles that are safer and cost less to repair, that should be reflected in the rates of people who drive those cars because they drive those cars, not because of their protected class status. This is the opposite of unfair discrimination. Fairness and economic efficiency are achieved best when the prices charged individuals are irrespective of race, national origin, income, or religion and are matched as close to risk as can be made possible.

Recommended Next Steps for the Committee

NAMIC recommends that the committee expand the dialogue to include consideration of its recently commissioned study, *"Matching Rate to Risk: Analysis of the Availability and Affordability of Private Passenger Automobile Insurance*." Conducted by Dr. Robert Klein, Senior Research Fellow with Temple University, Emeritus Professor of Risk Management and Insurance at Georgia State University, and the NAIC's former Director of Research, this study made use of the data collected by the (C) and (D) committees over an eight-year period and published in the NAIC's 2020 Private Passenger Auto Study. Dr. Klein's analysis, which was reviewed and deemed a "well-researched academic work" by the Casualty Actuarial Society[7], found, among other things, that loss ratios tend to vary inversely with income, indicating that low-income drivers actually receive more insurance benefits in relation to the premiums they pay than higher income drivers. We encourage the committee to invite Dr. Klein to discuss his findings at its next meeting.

Dr. Klein's study makes clear that, rather than a sole focus on the risk-based pricing structure of insurance, there are other avenues that should be studied and can contribute meaningfully to the important work of this committee – and NAMIC recommends exploring them. For example, to the extent this committee finds gaps in the availability or affordability of insurance and develops proposals for addressing them, we recommend that regulators consider ideas like consumer subsidies, re-distribution of premium taxes for identified communities, systematic review of historical loss ratios, and 3rd party vendor and algorithm transparency requirements.

The above recommendations should demonstrate clearly that NAMIC is committed to substantive and meaningful action on these salient issues. Thank you for the additional time provided to comment further on the proposed

[7] Founded in 1914, the CAS is the world's only actuarial organization focused exclusively on property and casualty risks and serves over 9,100 members worldwide. The CAS ensures that its members and candidates produce work that serves the public and adheres to a high standard of professionalism.

charges. We look forward to continued discussions with the committee, its members, and NAIC staff on these important issues.

Sincerely,

Jonathan Bergner
Vice President – Public Policy and Federal Affairs
jbergner@namic.org

May 14, 2021

Via email at knoonan@naic.org to
Kay Noonan, General Counsel

Commissioner David Altmaier, Florida
Director Dean Cameron, Idaho
Co-Chairs, Special Committee on Race and Insurance

National Association of Insurance Commissioners
444 N. Capitol Street, NW, Suite 700
Washington, DC 20001

Re: Request for Comments on Proposed Charges of Special Committee on Race and Insurance

Dear Commissioner Altmaier and Director Cameron:

On behalf of the National Association of Professional Insurance Agents (PIA)[1], thank you for the opportunity to provide feedback on the proposed 2021 charges of the Special Committee on Race and Insurance of the National Association of Insurance Commissioners (NAIC) and those charges that are being proposed for referral to other relevant committees.

First, we would like to thank the NAIC for addressing this important and complex issue. PIA repudiates all forms of racism and discrimination and prides itself on respecting the dignity of every individual. To that end, PIA believes that the proposed 2021 charges of the Special Committee on Racism and Insurance, along with those charges that are being proposed for referral to other relevant committees (hereinafter referred to collectively as "the proposed 2021 charges"), will advance our shared values of fairness, respect, integrity, and honesty. PIA supports efforts to bolster diversity and inclusion in insurance and would be pleased, where appropriate, to work with the NAIC, regulators, and our fellow interested parties to implement the proposed 2021 charges.

[1] PIA is a national trade association founded in 1931 that represents member insurance agents in all 50 states, Puerto Rico, Guam, and the District of Columbia. PIA members are small business owners and insurance professionals who can be found across America.

Specifically, PIA supports and intends to contribute to the execution of the Special Committee's charges to:

- Increase access to insurance products,
- Improve the level of diversity and inclusion in the insurance industry,
- Increase the availability of producer licensing exams in foreign languages (Workstream Three), and
- Examine the number and location of agents and brokers compared to demographics in a particular geographic area (Workstream Three).

We also want to draw the Special Committee's attention to an inadvertent omission in the new charge provided to the Market Regulation and Consumer Affairs (D) Committee. That charge states, "The Producer Licensing (D) Task Force will receive a report from [] on the availability of producer licensing exams …" We ask that the Special Committee identify the source of this important report before finalizing this crucial charge.

PIA appreciates the collaborative spirit with which the NAIC pursues this vital work and its commitment to consideration of stakeholder feedback, and we value our relationships with the NAIC and state insurance regulators all over the country. As members of the business community at large and the insurance industry specifically, it is our communal responsibility to make our neighborhoods, towns, and cities better places for all of us to live and work. Together with the NAIC, regulators, and our industry peers, we look forward to meeting this challenge.

PIA recognizes and appreciates the Special Committee's essential role in strengthening the future of the insurance industry by identifying and counteracting longstanding injustices. As always, we are grateful for the opportunity to provide the independent agent perspective. Please contact me at laurenpa@pianet.org or (202) 431-1414 with any questions or concerns. Thank you for your time and consideration.

Sincerely,

Lauren G. Pachman
Counsel and Director of Regulatory Affairs
National Association of Professional Insurance Agents