

Susan K. Neely
President & CEO

July 20, 2020

Innovation and Technology Task Force
National Association of Insurance Commissioners
444 North Capitol Street NW, Suite 700
Washington, D.C. 20001

Dear Task Force Members:

The American Council of Life Insurers (ACLI) appreciates the opportunity to comment on proposed principles regarding Artificial Intelligence (AI), as approved by the NAIC AI (EX) Working Group on June 30.

We also welcome a conversation with regulators, consumer groups and other industry stakeholders regarding proxy discrimination: what it means, and how systems, processes and oversight can be put in place to prevent AI from resulting in underwriting decisions that would otherwise be prohibited.

ACLI's endorsement of the AI Working Group's decision to advance its principles to the Innovation and Technology Task Force is based on the commitment we share with regulators to fair treatment of all life insurance industry customers.

The dialogue regarding these principles comes at a pivotal moment in our nation's history. Life insurers stand against racial discrimination. We are focusing our collective knowledge on identifying public policies and sustained partnerships to provide greater security to more people, especially financially vulnerable communities.

ACLI recognizes that AI is used across insurance sectors in vastly different ways to assess risk and determine fair prices for insurance coverage. This makes the regulators' task of developing comprehensive AI principles challenging. In life insurance, use of AI in the underwriting process began many years ago with the promise of enhancing the consumer experience with buying life insurance. It makes it less invasive and speeds up the process of issuing a policy in today's instant-delivery marketplace.

American Council of Life Insurers | 101 Constitution Ave, NW, Suite 700 | Washington, DC 20001-2133

The American Council of Life Insurers (ACLI) is the leading trade association driving public policy and advocacy on behalf of the life insurance industry. 90 million American families rely on the life insurance industry for financial protection and retirement security. ACLI's member companies are dedicated to protecting consumers' financial wellbeing through life insurance, annuities, retirement plans, long-term care insurance, disability income insurance, reinsurance, and dental, vision and other supplemental benefits. ACLI's 280 member companies represent 94 percent of industry assets in the United States.

With the onset of the COVID-19 pandemic, we witnessed a significant and increased interest in life insurance as many consumers began to realize how financially stressed their families could become upon death or disability of a key family member. Yet emergency shelter in place orders issued by public authorities significantly limited life insurers' ability to obtain medical information directly from applicants. To meet this consumer demand, many insurers began to rely more heavily on alternative ways to gather information needed to appropriately assess risk and issue policies online. If nothing else, the pandemic clearly demonstrated that innovation and technology are key to sustained consumer access to guarantees and financial protection that only insurers have to offer.

Today, our industry pays out an average of \$2.1 billion each day for products that protect Americans at all stages of life. Comparatively, Social Security pays out \$2.7 billion each day. These are impressive numbers, but we want to do even more. As we look at whether we are reaching Americans across the socioeconomic spectrum, AI can bring efficiencies that will help us reach underserved markets in ways never before possible. At a time when life insurance ownership is on the decline and the social safety net is increasingly strained, the need is great for public policies that expand viable private market opportunities for financial protection and security.

Life insurers fully embrace our responsibility to create opportunities for more Americans and strive to meet great societal need. We are committed to closing gaps and broadening financial wellbeing in meaningful ways. Again, we appreciate the opportunity for continued dialogue with regulators, consumer groups and other industry stakeholders.

Sincerely,

A handwritten signature in cursive script that reads "Susan K. Neely". The signature is written in black ink and is positioned to the right of the typed name.

Susan K. Neely



July 20, 2020

John Godfread, Chair
Innovations & Technology (EX) Task Force
National Association of Insurance Commissioners

Via email to Denise Matthews, dmatthews@NAIC.org

Re: Artificial Intelligence – July 1 Exposure

Dear Commissioner Godfread;

We appreciate the opportunity to submit comments to the Innovation and Technology (EX) Task Force on its consideration of the Principles on Artificial Intelligence as adopted by the Artificial Intelligence (EX) Working Group. We are grateful to you, Commissioner Godfread, as well as the members of the AIWG for their deliberate and open discussions on this topic. We also appreciate the foundational decision to make it clear that these Principles were for guidance purposes only, and were not intended to, nor do they, carry the weight of law or impose any legal liability. The wisdom of that approach by the Working Group is supported by the rate of innovation in the IT realm and specifically in Artificial Intelligence, which increasingly exceeds expectations. However, after listening to the debate by regulators and interested parties during the AIWG's last meeting, we offer a few suggestions which may improve your already good work.

The most extensive debate seems to have revolved around the broad concept of discrimination, and the narrower subset, proxy discrimination. In the section entitled, "Fair and Ethical" of the Principles, paragraph (a) refers to the concept of "unfair discrimination." As these Principles are to be used as guidance, it seems such a term as "unfair" offers little guidance, since in many situations, there seems to be disagreement about what is fair and unfair. Therefore, we would suggest "unfair" be replaced with a term which is more easily determined – unlawful. The change would be as follows:

- a. AI actors should respect the rule of law throughout the AI lifecycle. This includes, but is not limited to, insurance laws and regulations, such as those relating to trade practices, ~~unfair~~ **unlawful** discrimination, access to insurance, underwriting, privacy, consumer protection and eligibility practices, ratemaking standards, advertising decisions, claims practices and solvency.

Our second suggestion relates to proxy discrimination. Proxy discrimination typically refers to disparate impact caused by the use of correlated variables with the protected classes. It's not practical to eliminate all variables that may have slight, or only *de minimis* correlation, so we suggest adding the word "unlawful" to the reference to proxy discrimination in Paragraph (b). The change would be made as follows:

AI actors should proactively engage in responsible stewardship of trustworthy AI in pursuit of beneficial outcomes for consumers and to avoid **unlawful** proxy discrimination against protected classes. AI systems should not be designed to harm or deceive people and should be implemented in a manner that avoids harmful or unintended consequences.

Again, we thank you for the opportunity to offer these suggestions, and we look forward to discussing them at your convenience.

Sincerely yours,

America's Health Insurance Plans

Bob Ridgeway
Bridgeway@AHIP.org
501-333-2621



July 20, 2020

Commissioner Jon Godfread, Chair
Superintendent Elizabeth Kelleher Dwyer, Vice Chair
Innovation and Technology (EX) Task Force
NAIC Central Office
1100 Walnut, Suite 1500
Kansas City, MO 64106-2197

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

VIA Electronic Mail: dmatthews@naic.org

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

Dear Insurance Commissioner Godfread and Superintendent of Banking and insurance Dwyer:

The American Property Casualty Insurance Association (APCIA)¹ appreciates the collaborative work of the NAIC's Artificial Intelligence Working Group to create the voluntary high-level artificial intelligence guiding principles ("Principles") currently before the NAIC's Innovation and Technology Task Force.

Issues of racial equity and justice are important not only in their own right, but also as a context for public policy discussions within the financial services sector. APCIA's Board of Directors created a CEO Working Group on Racial Equity and Justice Issues to thoughtfully explore and address these issues. While the comments below reflect our initial thoughts regarding the proposed Principles, we believe that the underlying social questions deserve serious deliberation by insurance leaders and hope to continue to engage in a constructive dialogue with NAIC on these changes and the underlying issues as our CEO-level Working Group evolves our thinking. We have also invited the NAIC officers to meet with APCIA's Executive Committee on July 24 to discuss the evolving views and priorities of the state regulators and NAIC.

Fair and Ethical

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

While APCIA continues to have reservations with the use of the undefined term "proxy discrimination," we recognize this is only the beginning of an important dialogue and are committed to proactive and productive engagement and collaboration as this issue evolves. Importantly, the dialogue must be constructively framed consistent with the two-prong goal of insurance regulation – consumer protection and solvency. Additionally, consistent with the theme of this document and commentary throughout the drafting process, the Principles'

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

focus should be on developing processes and procedures that enable the responsible deployment of artificial intelligence applications.

Also, references to “harm” and the “pursuit of beneficial outcomes” are subjective terms that could unintentionally weaken the Principles with unachievable objectives. Consumers may not always interpret beneficial outcomes in the same manner. Therefore, in context of these Principles we are uncertain as to what these subjective terms really mean. Not every model, pricing or other tool, is part of the family of artificial intelligence applications and algorithms; however, fundamentally, insurance is defined by segmenting risk and insureds pay differently based on their own individual risk calculations. As a result, the perceived benefit to one consumer may not be perceived as a benefit to another.

In addition to segmenting risk for traditional pricing purposes, insurers also segment other types of “risks” that insureds can present, for example, fraud. A well-designed claim fraud model will better identify which potentially fraudulent claims should be further considered by fraud investigators. This, in turn, should lead to fewer payments associated with truly fraudulent claims, to the need for fewer investigation specialists, or to both, resulting in lower insurance premiums for all customers. Nevertheless, the fraudster that has been detected by the new tool will not necessarily see this use as a beneficial outcome.

Given the context of subsection b and the Principles in totality, APCA does not believe the elimination of “beneficial outcomes” and “harm” will negatively impact the goal of the Principles and instead could strengthen any voluntary implementation efforts with a balanced perspective.

Further, as drafted, suggesting that AI systems should avoid unintended consequences presupposes all unintended consequences will be bad and does not recognize that there could be good unintended consequences. The Task Force might even consider eliminating the second sentence altogether as it adds an element of confusion, because given the mechanical nature of AI, we question how a well-designed system could be implemented any differently than its design.

Therefore, we respectfully urge the Task Force to amend subsection (b) under **Fair and Ethical** as follows:

AI actors should have individual processes and procedures to proactively engage in responsible stewardship of trustworthy AI to assess in pursuit of beneficial outcomes for consumers and ~~to~~ avoid proxy discrimination against protected classes (such as race, color, religion, national origin, sexual orientation and age), while adhering to sound insurance principles grounded in effective solvency regulation. AI systems should not be designed to ~~harm or~~ deceive people and should be implemented in a manner that avoids ~~unlawful harmful or unintended~~ consequences.

As this is just the beginning of this important dialogue and recognizing the important role of each state’s legislature, we also stress the importance of incorporating a sentence in the introductory language that states, “These principles are not intended to expand current law, including insurance rating law.”

Consumer Protection

On further analysis, APCA recommends eliminating the reference to harm in the last sentence of the introductory paragraph under “Further, This Document.” Therefore, the end of the last sentence would read, “. . . while protecting consumers.” This offers a more holistic statement of the regulator’s consumer protection role.

Liability

Currently, the last sentence of the Accountability section focuses on a negligence standard for assessing corrective measures. The traditional remedy for ordinary negligence is and should be a corrective action, for which the ordinary negligence standard described in the principles does not clearly provide. APCA suggests

adding “willful and wanton” before negligence. As such, the last sentence would state: “However, absent willful and wanton negligence in the creation, implementation or monitoring of an AI system the remedy of an impact that violates existing regulation should be correction of said impact.”

Finally, APCIA is concerned with the potential implications for individual employee liability, since the reference for “AI actors” is broad and there is no language in the principles that limits accountability to the employer entity. Our reasoning is based on the opening sentence combined with statements in the compliance section that “AI actors must have the knowledge and resources in place to comply with all applicable insurance laws and regulations” and “compliance is required whether the violation is intentional or unintentional.” This seems like a potentially new employee liability that does not exist for many other employees. A sentence in the Accountability section indicating that nothing in these Principles should be interpreted as encouraging individual employee liability would be welcome.

Thank you again for the opportunity to comment. APCIA will actively and thoughtfully work through its governance process on the critical issues presented and we encourage NAIC to do the same. We are committed to continued diligent and productive engagement on these Principles and their utilization throughout the NAIC Committee structure.

Respectfully submitted,

Angela Gleason



Comments of the Center for Economic Justice
To the NAIC Innovation and Technology Task Force
Regarding Proposed NAIC Principles on Artificial Intelligence

July 20, 2020

The Center for Economic Justice (CEJ) offers the following comments on the proposed Artificial Intelligence principles

Preliminary Comment – Important Guidance for NAIC Work and Consumer Expectations

The use of big data analytics / artificial intelligence (“AI”) has great potential to benefit consumers and insurers in a number of ways, including lowering costs for insurers and consumers, improved product offerings for consumers, greater transparency of the insurance product and claims process and more opportunity for loss prevention partnerships among others. However, the potential for consumer harm has been recognized by scholars, data scientists, privacy advocates, civil rights advocates and governments throughout the world. The potential consumer harms include algorithmic bias against groups who have historically been the victims of unfair discrimination, lack of transparency and lack of accountability to those affected by the algorithms and those responsible for ensuring consumer protection, data privacy and data security for massive quantities of new personal consumer information, and competitive market failures resulting from data or data platform monopolies among others.

As the NAIC thinks about innovation, we suggest that innovation by insurers is not limited to new products or services or new loss prevention tools or more granular pricing and customer profiling. Insurers’ ability to innovate can and should extend to the consumer protection issues raised in the AI principles. Just as life insurers can innovate to utilize facial analytics, social media and other new data sources for accelerated underwriting, so can life insurers innovate to ensure that systemic racism and inherent bias has not permeated the A UW processes. And the same type of balanced innovation – new products and processes developed with attention to identifying and minimizing data and models biased by systemic racism – should be the goal of all insurance stakeholders.

We commend the ITTF and the NAIC for recognizing the importance of setting out the goals and values to guide the development of new tools and techniques.

Opening Paragraphs

RECOMMENDS that insurance companies and all persons or entities facilitating the business of insurance that play an active role in the AI system lifecycle, including third parties such as rating and advisory organizations and other providers of data and algorithms (hereafter referred to as “AI actors”) adhere to these fundamental principles.

The era of big data analytics and AI in insurance has been marked by the rapid growth in new organizations – not licensed as advisory or rating organizations – who provide third party algorithms and other AI products to insurers. Reference to such providers is vitally important to indicate the scope of the application of the principles and to impress upon insurers that use of a third party vendor for data or algorithms does not relieve the insurer of working to meet the AI principles.

THIS DOCUMENT is intended to establish consistent high-level guiding principles for AI actors. These principles are guidance and do not carry the weight of law or impose any legal liability. However, this guidance can serve to inform and establish general expectations for AI actors and systems emphasizing the importance of accountability, compliance, transparency, and fair, safe, secure and robust outputs.

We note that the first category of the AI principles is “Fair and Ethical.” Consequently, the term fair should be included in the types of outputs expected from insurers’ use of AI.

Fair and Ethical

The inclusion of proactive engagement to avoid proxy discrimination against protected classes is essential.

We support the inclusion of pro-active efforts by industry and regulators to address “proxy discrimination against protected classes.” The arguments put forward in opposition factually incorrect and without empirical or logical support. Following our other comments on the draft, we provide more detailed discussion of this issue in the last section of our comments.

AI actors should proactively engage in responsible stewardship of trustworthy AI in pursuit of beneficial outcomes for consumers and to avoid proxy discrimination against protected classes. AI systems should not be designed to harm or deceive people and should be implemented in a manner that avoids harmful, ~~or~~ unintended consequences and corrects and compensates for such consequences when they occur.

We suggest replacing the “or” between harmful and unintended in the last sentence with a comma. While some unintended consequences may be harmful to consumers, it is not a given that all unintended consequences are harmful.

The additional language recognizes that some outcomes may be harmful to consumers and, if so, the harm should be addressed – both by fixing the algorithm and reversing the harm to the consumer. This addition is related to the two proposed deletions, discussed below.

Accountable

- a. AI actors should be accountable for ensuring that AI systems operate in compliance with these principles consistent with the actors' roles, within the appropriate context and evolving technologies. Any AI system should be compliant with legal requirements governing its use of data and algorithms during its phase of the insurance life cycle. Data supporting the final outcome of an AI application should be retained and be able to be produced in accordance with applicable insurance laws and regulations in each jurisdiction. AI actors should be responsible for the creation, implementation and impacts of any AI system, even if the impacts are unintended. AI actors should implement mechanisms and safeguards consistent with the degree and nature of the risks posed by AI to ensure all applicable laws and regulations are followed, including ongoing (human or otherwise) monitoring and, when appropriate, human intervention. ~~However, absent negligence in the creation, implementation or monitoring of an AI system, the remedy of an impact that violates existing regulation should be correction of said impact.~~

We suggest deletion of the last sentence for several reasons. First, the proposed additional wording for the Fair and Ethical section covers this issue in a manner more balance between consumers and insurers.

Second, the sentence discussed violation of an existing regulation, yet the purpose of the AI principles is to provide insurers with guidance and consumer and regulatory expectations in the absence of regulations.

Third, ruling out restitution to consumers unless negligence can be demonstrated is contrary to current regulatory practice and common sense. Consider an algorithm that assess an applicant's risk and calculates the premium. Suppose that algorithm has a flaw that systemically overcharges by, say 10%. The remedy under current legal requirements would be fixing the algorithm and refunding the overcharges to consumers. The proposed sentence would, however, eliminate any consumer restitution for harm suffered. If consumers have suffered demonstrable harm – and calculable economic damage – as a result of faulty algorithm, there is no logic to denying restitution to the consumer simply because the insurer or algorithm provider wasn't "negligent." We urge the Task Force to delete this sentence in favor of the proposed additional language at the end of the Fair and Ethical Section

Compliant

- a. AI actors must have the knowledge and resources in place to comply with all applicable insurance laws and regulations. AI actors must recognize that insurance is primarily regulated by the individual states and territories of the United States as well as by the federal government, and that AI systems must comply with the insurance laws and regulations within each individual jurisdiction. Compliance is required whether the violation is intentional or unintentional. Compliance with legal requirements is an ongoing process. Thus, any AI system that is deployed must be consistent with applicable laws and safeguards against outcomes that are either unfairly discriminatory or otherwise violate legal standards, including privacy and data security laws and regulations. ~~Any decision by an AI actor that utilizes an AI system in its creation shall not be held in violation of existing regulation, if that same decision would have been rendered without the use of an AI system.~~

This sentence sets up an impossible test. The purpose of AI is to replace existing decision-making models. In some cases, that replacement is simply automating a manual process. But, in most cases, that replacement is with an entirely new approach to the sale, pricing, or claims settlement. What does it mean – and how would an insurer or regulator determine – if the result of a flawed telematics pricing algorithm would have been the same as if no telematics algorithm had been used? There is simply no way to compare.

In addition, the language is tied to “violation of existing regulation.” Again, one of the core purposes of these AI principles is to provide guidance for future regulations and guidance to insurers on consumer and regulator expectations in the absence of regulations. Consequently, there is a mismatch if a principle contains a reference to an existing regulation.

Finally, we suggest that the proposed additional language at the end of the Fair and Ethical section accomplishes the intent of the last sentence in the Compliant section, but in a more balanced and principle-oriented manner.

Transparent

- a. ~~For the purpose of improving the public’s confidence in AI, AI actors should commit to transparency and responsible disclosures regarding AI systems to relevant stakeholders, particularly to the people whose outcome is affected by the algorithm, including consumers. AI actors must have the ability to protect confidentiality of proprietary algorithms and adherence to individual state law and regulations in all states where AI is deployed. These disclosures about the content and use of AI should be proactive and disclosures include revealing the kind of data being used, the purpose of the data in the AI system and the expected outcomes for affected people, consequences for all stakeholders. People who are affected by the AI-driven decisions and who are responsible for ensuring these AI practices are fair and legally compliant~~

- b. ~~Consistent with applicable laws and regulations, stakeholders (which includes regulators and consumers)~~ should have a way to inquire about, review and seek recourse for AI-driven insurance decisions. This information should be, easy-to-understand and describe the factors that lead to the prediction, recommendation or decision. This information may be presented differently and should be appropriate for applicable stakeholders.

[Clean] **Transparent**

For the purpose of improving the public’s confidence in AI, AI actors should commit to transparency and responsible disclosures regarding AI systems to relevant stakeholders, particularly to the people whose outcome is affected by the algorithm. Disclosures about the content and use of AI should be proactive and include the kind of data being used, the purpose of the data in the AI system and the expected outcomes for affected people. People who are affected by the AI-driven decisions and people who are responsible for ensuring these AI practices are fair and legally compliant should have a way to inquire about, review and seek recourse for AI-driven insurance decisions. This information should be easy-to-understand and describe the factors that lead to the prediction, recommendation or decision. This information may be presented differently and should be appropriate for applicable stakeholders.

We suggest the above edits, shown in both redline and clean versions.

The current version of the Transparent section repeats many of the same ideas in both parts a and b. For example, the concepts in the last sentence of a are largely repeated in part b. Further, the sentence that AI actors “must have the ability to protect confidentiality of proprietary algorithms” is both out of place and overbroad. It is out of place in a section on transparency and it is overbroad in that it may conflict with accountability to consumers as well as state public information laws. While we do not object to protection for trade secrets of AI vendors and insurers, we do object to the original wording which would pre-empt state public information laws – laws which were crafted to balance the interests of those claiming exemption from public disclosure with the rights of the people to know about their government and its actions.

Discussion of Proxy Discrimination

We note that in prior discussions, the industry trades have opposed the addition of the principle that insurers should proactively avoid proxy discrimination against protected classes. And at least one regulator has also argued that “proxy discrimination” is undefined and unclear. We reject these arguments and urge the Task Force to do so also for the following reasons.

First, “proxy discrimination against protected classes” is crystal clear. It means discriminating against a class of consumers identified for protection in statutes or regulation by means of a proxy for the class identification. Both parts of the phrase are well understood – protected classes and proxy discrimination. And that clarity is perfectly suited to the purpose of being a guiding principle. To claim that the phrase should not be included because we don’t currently have a model law or regulation that provides definitions and techniques and safe harbors is beside the point – we know about proxy discrimination against protected classes to understand that it is one of the major consumer protection issues with AI and that addressing such algorithm bias has been at the core of every set of AI principles produced around the world..

Further, the concept of disparate impact – in employment, lending and insurance – has been a part of federal law for over 40 years and has a long history of application. Insurer trade associations have been fighting the application of disparate impact to insurance for as long as disparate impact has been around. It is clearly disingenuous for these same trades to now claim this is a new concept in insurance.

More important, the history of application of disparate impact to insurance under the federal Fair Housing Act has shown positive outcomes and improvements in cost-based pricing. For example, in the 1990’s, fair housing groups brought a disparate impact challenge against insurers’ use of age and value of the home for underwriting. The groups argued that these underwriting guidelines discriminated against minority communities because these communities’ housing was characterized by low value and old age. The challenges were largely successful and, in response, insurers developed more detailed underwriting based on, for example, age and type of electrical system and age and condition of the roof.

Second, industry arguments that current statutes do not envision proxy discrimination are factually incorrect and irrelevant. Even if industry is correct current statutes (they are not), that would not prevent the inclusion of an aspirational principle to identify and eliminate systemic racism in insurance.

But, industry is incorrect. As laid out in more detail in our recent comments to NCOIL, there is no statutory support for the industry proposition that a simple correlation is all that is required and all that regulators must accept. Regulators on this Task Force have long stated and acted to stop the use of factors that produced spurious correlations or served as proxies for protected class characteristics.

Third, the inclusion of a requirement for proactive efforts to identify and address proxy discrimination are necessary to prompt insurers and other developers of algorithms to action. Simply stated, if there is no requirement – whether aspirational or statutory – for insurers to look for and minimize systemic racism in insurance, they just won't do it. At various NAIC working groups and task forces, insurers and vendors make presentations about their models and algorithms – for pricing telematics, fighting fraud, more granular pricing, using new data sources – and when asked what they have done to identify racial bias in the data or algorithm outcomes, the answer, without exception, is nothing. This simply must change if we are ever to achieve racial justice in America.

Fourth, it is unclear who the trades are speaking for when they argue against including efforts to address proxy discrimination in the AI principles. Insurance company CEOs have come out with public statements decrying systemic racism and inherent bias and vowing to take the steps necessary to address practices that unintentionally reflect and perpetuate systemic racism. Here are two:

“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.

And Nationwide has taken action to back up its words. In a July 14, 2020 to the Department of Housing and Urban Development (HUD), Nationwide asked that HUD pause adoption of proposed revisions to the HUD Disparate Impact Rule – a proposal that fair housing and civil rights advocates have strongly criticized for eviscerating disparate impact unfair discrimination. Nationwide wrote:

Given the country's growing concerns on the issue of systemic racism, we believe the timing and extent of HUD's proposed amendments to its disparate impact rule may not be right for adoption at this time. These concerns should compel us to step back and listen to better understand the depth and extent of this long-rooted issue, then share a renewed commitment to take the appropriate actions toward ending racism. At Nationwide, we are taking the time to engage in many conversations among our associates, and between our associates, elected officials and civil justice leaders, to further understand these issues. We are learning much, and as we do, we are taking more informed actions toward positive change.

With that in mind, Nationwide respectfully requests HUD refrain at this time from adopting the pending proposal to amend its disparate impact rule. Taking a pause to reassess each component of the proposal in light of recent developments should achieve a better result for the future. We believe re-engaging relevant stakeholders to the rule in a thoughtful exchange on the specific features of the current proposal, including the questions raised in the proposing release, would be productive. By incorporating insights gained from recent events and further input from stakeholders, HUD can then be better positioned to ensure future or modified proposals appropriately protect all Americans from unjust housing discrimination.

So, we must ask, given insurers' commitment to fighting systemic racism, who are the industry trades representing when they oppose recognition of proxy discrimination against protected classes as unfair discrimination in insurance? The trades' argument are morally and factually bankrupt in their opposition to recognition of proxy discrimination as unfair discrimination and stand in stark contrast to the statements and actions of some insurers.

We commend the members of the ITTF and NAIC for the leadership shown to date on these issues of racial justice and urge the members to hold fast to these important principles.



Comments of the Center for Economic Justice

To NCOIL Regarding the Proposed

“Resolution Urging the National Association of Insurance Commissioners to Refrain from Intruding on the Constitutional Role of State Legislators.”

June 28, 2020

The Center for Economic Justice (CEJ) suggests that NCOIL withdraw the ill-conceived “Resolution Urging the National Association of Insurance Commissioners to Refrain from Intruding on the Constitutional Role of State Legislators.” The Resolution suffers from a number of false statements, fails to recognize the reality of current ratemaking and regulatory review, miscomprehends the oft-repeated term “correlation,” represents an endorsement of proxy discrimination against protected classes and misdiagnoses the problem with the white paper’s use of rational explanation. Among the problems with the resolution:

1. It is unclear why NCOIL has decided that a technical paper regarding review of complex pricing algorithms is the target for the proclamation of correlation as the intent and sole purview of state legislators. The fact that, among the many critical issues facing insurance consumers, NCOIL has prioritized an industry complaint feeds the perception by some that NCOIL’s actions reflect the priorities of its industry corporate sponsors.
2. The premise of the resolution – “established rate filing review is based on correlation” – is demonstrably false and unsupported by statutory language. Neither of the NCOIL rating models cited in the resolution used the term “correlation.” The purported reliance on “correlation-only” conflicts with the language of the NCOIL models regarding unfair discrimination.
3. As a former regulator charged with review and approval of rate filings and an expert witness in administrative and judicial proceedings on unfair discrimination and risk classification in insurance for nearly 30 years, simple correlation has never been sufficient justification for a risk classification.
4. The repeated references to “correlation” divorce the resolution from the reality of rate filings today. Insurers now use algorithms – whether for pricing, claims, anti-fraud or more – based on statistical techniques light years from simple correlation.

5. The repeated references to “correlation” are an endorsement of proxy discrimination. By declaring that any correlation is sufficient justification – even if that correlation is a proxy for discrimination against a protected class – and defending such proxy discrimination on the basis of states’ rights the resolution ignores and repudiates the commitment and efforts by industry and regulators to address systemic racism in insurance.
6. The problem with the use of “rational explanation” in the CASTF White Paper is not a usurpation of legislative prerogative. Rather, “rational explanation” is a subjective approach to the problem of identifying spurious correlations.

Why This Resolution Targeting a NAIC Technical White Paper Now?

Insurance regulators at the NAIC have been grappling for over five years with the revolution in insurance operations resulting from insurers’ use of big data analytics, complex algorithms, artificial intelligence and machine learning. The regulators’ concerns are being examined in the NAIC’s Artificial Intelligence Working Group, the Accelerated Underwriting Working Group, the Big Data Working Group, the Innovation and Technology Task Force, the Casualty Actuarial Task Force and more. Insurers’ use of big data analytics represents a revolution in insurer operations that has challenged both regulators’ ability to keep up with industry practices and for decades-old statutory authorities to provide the necessary consumer protections.

Of all the NAIC activities related to regulatory responses to insurers’ use of big data analytics, it is curious that NCOIL has prioritized – in the current period of pandemic and systemic racism issues – with a phrase in a 50-page NAIC white paper – to proclaim a resolution. The fact that NCOIL chooses to prioritize this particular industry complaint about a NAIC technical white paper will fuel the contention of some that NCOIL parrots the interests of its industry corporate sponsors.

As discussed further below, the problem with the term “rational explanation” in the white paper, is not that it challenges state legislative authority, but that it is a technically incorrect approach to addressing problems of spurious correlations.

False Foundation – “Correlation” Does Not Appear in NCOIL and NAIC Rating Models

The foundation of resolution is that claim, “**WHEREAS**, established rate filing review is based on correlation, which demonstrates that rating variables are valid so long as they correlate with a loss.”

Yet, the term “correlation” does not appear in either of the NCOIL rating models cited in the resolution. Nor does “correlation” appear in any of the NAIC property casualty rating

models.¹ Nor does “correlation” appear in the Casualty Actuarial Society’s “Statement of Principles Regarding Property and Casualty Insurance Ratemaking.”² Nor does it appear in the American Academy of Actuaries “Risk Classification Statement of Principles.”³ The term “correlative classes” appears once in the Risk Classification of Principles in a section on Credibility and not in the manner suggested by the resolution.⁴ These risk classification principles identify a variety of considerations in developing risk classifications, including stability in avoiding abrupt changes in prices, maximizing the availability of coverage, minimizing ability to manipulate or misrepresent a risk characteristic and the need for public acceptability.

Any risk classification system must recognize the values of the society in which it is to operate. This is a particularly difficult principle to apply in practice, because social values:

- are difficult to ascertain;
- vary among segments of the society; and
- change over time.

The following are some major public acceptability considerations affecting risk classification systems:

- They should not differentiate unfairly among risks.
- They should be based upon clearly relevant data.
- They should respect personal privacy.
- They should be structured so that the risks tend to identify naturally with their classification.

In fact, a simple “correlation” is not the basis for fair discrimination. NAIC models define unfair discrimination to exist if “after allowing for practical limitations, price differentials fail to reflect equitably the differences in expected losses and expenses.” The NCOIL models don’t define unfair discrimination other than discrimination “on the basis of race, color, creed, or national origin.”

If, as claimed in the resolution that “rate filing review is based on correlation,” then the appropriate test for discriminating “on the basis of race, color, creed, or national origin” would also be a simple correlation between the rating factor and the prohibited classifications.

¹ See <https://www.naic.org/store/free/GDL-1780.pdf> and <https://www.naic.org/store/free/GDL-1775.pdf> and <https://www.naic.org/store/free/GDL-1781.pdf>

² <https://www.casact.org/professionalism/standards/princip/spperate.pdf>

³ <http://www.actuarialstandardsboard.org/wp-content/uploads/2014/07/riskclassificationSOP.pdf>

⁴ “Accurate predictions for relatively small, narrowly defined classes often can be made by appropriate statistical analysis of the experience for broader groupings of correlative classes.

Miscomprehension of “Correlation” and Regulatory Review of Rate Filings

The resolution incorrectly equates simple correlation with the statutory standards for rates. A correlation is simply the extent to which a pair of variables are related. There are many correlations between variables that bear no relationship to one variable predicting the other variable – and that latter is the essence of a rating factor identifying price differentials among consumers in the cost of the transfer of risk.

Here are some examples of very highly correlated variables, which are also examples of “spurious correlation”⁵ – “two or more events or variables that are associated but not causally related due to either coincidence or a third unseen factor.”⁶ A perfect correlation is 100%. No correlation is 0%.

- There was a 94.7% correlation between per capita cheese consumption and the number of people who dies by becoming tangled in their bedsheets from 2000 to 2009.
- There was a 99.3% correlation between the divorce rate in Maine and per capita consumption of margarine from 2000 to 2009. As an aside, the Indiana Department of Insurance disapproved a rate filing in which the insurer sought to use per-capita margin consumption as a risk classification.
- There was a 98.5% correlation between total revenue generated by arcades and computer science doctorates awarded in the US from 2000 to 2009.

In the 30 years that I have been reviewing rate filings and risk classifications and regulatory activity in this arena, a simple correlation has never been a sufficient justification for a rating factor.

We offer two real life examples to demonstrate why this is the case. First, in the early 1990s in Texas, an insurer in Texas sought approval for a homeowners discount based on tenure with insurer – if an insured was with the company for several years, they would bet a discount. The insurer provided the following information⁷:

Tenure (Years)	1	2	3	4	5	6	7	8
Loss Ratio	64.0%	63.4%	62.8%	62.2%	61.6%	61.0%	60.4%	60.0%

⁵ <https://tylervigen.com/spurious-correlations>

⁶ https://en.wikipedia.org/wiki/Spurious_relationship

⁷ These are not the actual numbers, but an illustration of the actual situation.

Based on this simple “correlation,” the loss ratio seemed to track years of tenure with the company. By the standards of the resolution, this presentation of loss ratios would have been the end of discussion and prohibited any further inquiry by the regulator. In fact, the company was asked to produce loss ratios by years of tenure separate for homeowners (e.g., HO-3) policies and renters’ policies (e.g. HO-4). It turned out that the company had combined the experience.

When looked at separately, the loss ratios for each of the two types of policies didn’t vary with tenure. Homeowners loss ratios were consistent and consistently lower than those for renters’ policies. The spurious findings in the table above were a result of the percentage of renters’ policies declining as a share of total homeowners policies over time – far fewer people rent for five, six, or seven years than for one or two years so the declining loss ratios in the table were a result of fewer high-loss ratio renters’ policies for each additional year of tenure.

A second example comes from a disparate impact challenge under the federal Fair Housing Act. In the mid 1990s, fair housing groups challenged insurers’ use of age and value of the home as underwriting factors for homeowners insurance. The insurers used these factors because of a correlation to expected losses. The fair housing groups showed that using age and value of the home served as proxies for race and income. Because of historical discrimination in housing and mortgages, the housing in communities of color was characterized by older age and lower values. When confronted with the data, the insurers recognized they were using a proxy for condition of the home that was, in fact, a proxy for race. The insurers stopped using age and value of the home and started using more accurate variables like age and condition of the roof and type of electrical system. By responding to the disparate impact challenge, insurers stopped penalizing minority homeowners who maintained their homes with race-based underwriting.

Miscomprehension of Insurer Rating Practices and the Challenges for Regulators

The resolution’s references to “correlation” seem like a quaint reference to a long-gone – by 50 years – era. The same NAIC Casualty Actuarial Task Force holds monthly “book clubs” in which insurers and experts make presentations on current ratemaking practices. This past week was an example in which Allstate subsidiary Arity made a presentation on the development of their telematics pricing models for auto insurance.⁸ The title of the presentation was “Modeling concepts, hyperparameter tuning, and telematics.” The presentation reviewed the parts of a scoring (pricing) model, including ordinary least squares regression, generalized linear models, generalized linear models with log link functions, decision tree models, neural nets, gradient descent, hyperparameters and extreme gradient boosting. Needless to say, that when a regulator is presented with rating factors based on such a model, it is meaningless to try to look for a simple correlation.

⁸ https://content.naic.org/sites/default/files/call_materials/Modeling%20concepts%20hyperparameter%20tuning%20and%20telematics.pdf

It is this new and massive complexity – actuarial science merged with data science merged with astrophysics – that presents the challenge for regulators to enforce current statutes. We suggest that instead of a resolution harkening back to a by-gone era that never really existed, NCOIL’s efforts would be better spent working with regulators to modernize regulatory authorities and capabilities to deal with the reality of complex models in insurance.

A challenge for insurers and regulators that has always existed and continues to exist is whether a particular relationship – correlation – is real or spurious. When insurers have tried to utilize the closest thing to a simple correlation, insurers and regulators have found problems. Thirty or more years ago, insurers may have presented justification for a particular rating factor with what is known as a univariate analysis – comparing one predictive variable to, say, loss ratio. With traditional actuarial practices, looking at two or more variables at the same time was difficult because each additional variable required more data for a credible – or reliable – analysis. But the univariate analysis always had problems because insurers and regulators knew that, in addition to any correlation between particular rating factors and loss ratio, there was correlation between the rating factors with the result that univariate analysis led to double counting.

For example, both age and miles driven are related to expected losses. But as drivers get older – and retire from work – they drive less. So, a simple analysis of age and expected losses is reflecting the correlation miles driven and vice versa. So using both based on independent analyses yields double counting.

Since the early 1990s – at least – insurers have moved to new statistical techniques to develop and analyze rating factors. These techniques permit the simultaneous analysis of multiple variables and remove the correlation among the variables to eliminate double counting of impact on outcomes. Stated differently, the multivariate techniques used today advance from and address the limitations of “correlation.”

This issue is discussed in greater detail in the attached “CEJ Call to Insurers and Insurance Regulators to Address Systemic Racism in Insurance.”

Tacit Endorsement of Proxy Discrimination against Minority Consumers and Other Protected Classes in the name of States’ Rights.

The repeated references to “correlation” in the resolution are an endorsement of proxy discrimination. By declaring that any correlation is sufficient justification – even if that correlation is a proxy for discrimination against a protected class and defending such proxy discrimination on the basis of states’ rights – ignores the commitment and efforts by industry and regulators to address systemic racism in insurance.

By the standard espoused in the resolution, a rating factor that was a proxy for being a Black American is legitimate as long as there is a correlation to losses. Never mind that the factor is a proxy for a prohibited class or that that the factor discriminates on the basis of a prohibited factor.

Some data vendors offer a criminal history score that purports to score homeowners insurance on the basis of complaints filed with courts. Based on the resolution, as long as there was a “correlation,” that would not only be okay, but regulators are prohibited from further inquiry. What would the use of a criminal history score look like in the case of George Floyd, if he lived? What would the use of a criminal history score look like in Ferguson, Missouri, where the US Department of Justice found the following.

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.

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.

It would be interesting to count the number of NCOIL members who have received citations for Manner of Walking in Roadway, let alone been penalized with higher insurance rates as a result.

In the aftermath of the murder of George Floyd, many insurer CEOs made statements declaring their personal and corporate opposition to inherent bias and systemic racism. The NCOIL resolution goes in the other direction – it defends systemic racism in insurance by prohibiting inquiry into proxy discrimination. This unfortunate position by NCOIL is also tone-deaf. It relies upon the same states’ rights argument used by those opposing the abolition of slavery and integration.

The Problem with the White Paper’s Use of “Rational Explanation” is Not a Challenge to Statutory Standards, but a Technical Issue with Identifying Spurious Correlations

The CASTF’s white paper use of “rational explanation” is problematic because it is a subjective approach to addressing spurious correlations. It is not a challenge to the mythical statutory standards in the resolution because regulators and actuarial standards of practice have always sought to distinguish between real and false relationships among predictive variables in insurance. “Rational explanation” is problematic because “rational” is subjective – a rational explanation to one person may not be rational to another. The way to address the problem with “rational explanation” is to urge regulators to utilize more of the advanced analytic and statistical tools to distinguish between fair and proxy discrimination. Again, the attached CEJ paper discusses this in more detail.

The NAIC Casualty Actuarial and Statistical Task Force deals generally with actuarial issues in property casualty lines of insurance. The Task Force is currently developing a white paper to provide best practices for regulatory review of complex pricing models used by insurers to justify rates. The current draft does not incorporate identification and minimization of systemic bias or disparate impact, but simply lists it as another consideration. Insurance rate standards include rates not being excessive, not being inadequate and not being unfairly discriminatory.

The use of complex predictive models for pricing by insurers is focused on risk segmentation and the development of risk classifications and rating factors. Traditional actuarial techniques – not complex predictive models – are generally used for overall rate level indications – the metric for assessing whether rates are excessive or inadequate. The overwhelming reason for close scrutiny of complex predictive models by regulators is to assess whether the risk classifications are fair or unfairly discriminatory. It is an understatement to say that the current draft white paper has a massive whole because of the failure to address proxy discrimination and disparate impact. Guidance to insurance regulators for regulatory review of complex insurance predictive models should prioritize the identifications and minimization of systemic bias and disparate impact.

Conclusion

For a myriad of reasons, CEJ suggests that NCOIL withdraw this deeply-flawed resolution.



STATE OF CONNECTICUT

INSURANCE DEPARTMENT

July 10, 2020

(via email: dmatthews@naic.org)

Denise Matthews

National Association of Insurance Commissioners

RE: CID Comments on AI Principles as Adopted by AIWG

Denise,

The Connecticut Insurance Department (CID) appreciates the opportunity to respond and hereby submits the following comments concerning the AI Principles as Adopted by AIWG.

OPENING PARAGRAPHS

RECOMMENDS that insurance companies and all persons or entities facilitating the business of insurance that play an active role in the AI system lifecycle, including third parties such as rating and advisory organizations and data providers (hereafter referred to as “AI actors”) promote, consider, monitor, and uphold the following principles according to their respective roles; and

THIS DOCUMENT is intended to establish consistent high-level guiding principles for AI actors. These principles are guidance and do not carry the weight of law or impose any legal liability. However, this guidance can serve to inform and establish general expectations for AI actors and systems emphasizing the importance of accountability, compliance, transparency, and fair, safe, secure and robust outputs.

Comment: Data providers should be included in the list of parties that play an active role in the AI systems. In addition, as “fair and ethical” are a subset of this guidance, the term “fair” should be included as an important element of the expectations.

FAIR AND ETHICAL

- b. AI actors should proactively engage in responsible stewardship of trustworthy AI in pursuit of beneficial outcomes for consumers and to avoid proxy discrimination against protected classes. AI systems should not be designed to harm or deceive people and should be implemented in a manner that avoids harmful ~~or~~ unintended consequences, and corrects and compensates for such consequences when they occur.

Comment: Innovation brings the possibility of failure. This directive should be aspirational. Unintended consequences may not be harmful and need not be addressed if they are not and an allowance should be provided to correct and compensate for such consequences.

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ACCOUNTABLE

- a. AI actors should be accountable for ensuring that AI systems operate in compliance with these principles consistent with the actors' roles, within the appropriate context and evolving technologies. Any AI system should be compliant with legal requirements governing its use of data and algorithms during its phase of the insurance lifecycle. Data supporting the final outcome of an AI application should be retained and be able to be produced in accordance with applicable insurance laws and regulations in each jurisdiction. AI actors should be responsible for the creation, implementation and impacts of any AI system, even if the impacts are unintended. AI actors should implement mechanisms and safeguards consistent with the degree and nature of the risks posed by AI to ensure all applicable laws and regulations are followed, including ongoing (human or otherwise) monitoring and when appropriate, human intervention. ~~However, absent negligence in the creation, implementation or monitoring of an AI system the remedy of an impact that violates existing regulation should be correction of said impact.~~

Comment: CID is not comfortable with the last sentence of this section and recommends that it be removed. The repercussions of violations should not be limited in a guidance publication and such statement may have a negative impact on a regulator's future enforcement actions. The principles set forth in this draft are designed to present guidance for AI actors and this last sentence seems incompatible with that purpose. The principles are not intended to be regulatory guidance document yet this last sentence addresses actions by the regulator.

COMPLIANT

- a. AI actors must have the knowledge and resources in place to comply with all applicable insurance laws and regulations. AI actors must recognize that insurance is primarily regulated by the individual states and territories of the United States as well as by the federal government, and that AI systems must comply with the insurance laws and regulations within each individual jurisdiction. Compliance is required whether the violation is intentional or unintentional. Compliance with legal requirements is an ongoing process. Thus, any AI system that is deployed must be consistent with applicable laws and safeguards against outcomes that are either unfairly discriminatory or otherwise violate legal standards, including privacy and data security laws and regulations. ~~Any decision by an AI actor that utilizes an AI system in its creation shall not be held in violation of existing regulation, if that same decision would have been rendered without the use of an AI system.~~

Comment: Similar to the prior comment, CID does not see the benefit in including this last sentence in this section which has the potential to limit the ability of a regulator to ensure compliance and enforcement if necessary. The principles set forth in this draft are designed to present guidance for AI actors and this last sentence seems incompatible with that purpose. The principles are not intended to be regulatory guidance document yet this last sentence addresses actions by the regulator. In addition, as worded it seems to allow for greater protection for AI-based decision making than other more conventional types.

TRANSPARENT

- a. For the purpose of improving the public's confidence in AI, AI actors should commit to transparency and responsible disclosures regarding AI systems to all relevant

stakeholders, ~~including consumers~~. AI actors must have the ability to protect confidentiality of proprietary algorithms ~~and~~ provided adherence to individual state law and regulations in all states where AI is deployed can be demonstrated. These proactive disclosures include revealing the kind of data being used, the purpose of the data in the AI system and consequences for all stakeholders.

Comment: CID recommends removing the one separately identified stakeholder (consumers). By naming one you run the risk of unintentionally having others argue that they were not intended to be included. The other recommendation provides a stronger statement that AI actors should have the ability to protect algorithms provided they can demonstrate that they have adhered to the relevant state laws and regulations.

We hope that these comments are helpful. Please feel free to contact me should you have any questions.



Andrew N. Mais
Connecticut Insurance Commissioner



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CDIAONLINE.ORG

July 20, 2020

Honorable Jon Godfread
Commissioner, North Dakota Insurance Department
Chairman, NAIC Artificial Intelligence (EX) Working Group
North Dakota Insurance Department
600 E Boulevard Ave.
Bismarck, ND 58505-0320

Honorable Mark Afable
Commissioner, Office of the Commissioner of Insurance
Vice-Chairman, NAIC Artificial Intelligence (EX) Working Group
Office of the Commissioner of Insurance
125 South Webster Street
Madison, Wisconsin 53703-3474

Submitted Electronically to dmatthews@naic.org

Re: NAIC AI Principles as Adopted by the Artificial Intelligence (EX) Working Group (AIWG)

Dear Chairman Godfread and Vice Chair Afable:

I write on behalf of the Consumer Data Industry Association (CDIA) to comment on the NAIC's AI Principles as Adopted by the Artificial Intelligence (EX) Working Group (AIWG). Thank you for allowing CDIA a chance to offer comments on behalf of our consumer reporting agency ("CRA") members.

The Consumer Data Industry Association is the voice of the consumer reporting industry, representing consumer reporting agencies including the nationwide credit bureaus, regional and specialized credit bureaus, background check and residential screening companies, and others. Founded in 1906, CDIA promotes the responsible use of consumer data to help consumers achieve their financial goals, and to help businesses, governments and volunteer organizations avoid fraud and manage risk.

CDIA members would be considered "AI actors" for the purposes of these guidelines. CDIA members are third parties that provide Credit-Based Insurance Scores and other key information in the rating and underwriting process. We cannot speak for other third-party vendors or the newer "Insurtechs" that have entered the marketplace. However, CRAs and their products, most notably Credit Based Insurance Scores, are already heavily regulated at the federal and state level. CDIA members already adhere to many of the principles outlined in the draft guidelines outlined by the AIWG in this document.

CRAs and their products, most notably Credit Based Insurance Scores, are already subject to robust privacy and data security regulation and oversight being subject to the Federal Fair Credit Reporting Act (FCRA), Gramm-Leach-Bliley Act (GLBA), Drivers Privacy Protection Act (DPPA) and

others. In addition to federal regulation, most states have enacted the National Council of Insurance Legislators “Model Act Regarding the Use of Credit Information in Personal Insurance,” which impose specific restrictions on how insurers can use credit information in underwriting or rating risks. For example, the model law prohibits insurers from using an insurance score calculated using income, gender, address, zip code, ethnic group, religion, marital status or an individual’s nationality.

In addition to the federal and state laws, CRAs are subject to robust regulatory oversight. CRAs are already over seen at the federal level by the Consumer Financial Protection Bureau (CFPB) and Federal Trade Commission (FTC), along with several states implementing their own regulations and the Conference of State Banking Commissioners looking into the industry as well. CRAs operate in accordance with the robust accountability and compliance standards that have been created and exist within the existing federal and state legal and regulatory framework described above. While we appreciate Insurance Regulators’ desire to create accountability and compliant standards for AI Actors, increased regulation will impact consumers, significantly hampering speed to market and availability of products consumers need and does not appear to add much, if any additional benefit to consumers. We request that any additional regulation drafted or promulgated following the Principles on Artificial Intelligence consider existing legal and regulatory frameworks and avoid creating duplicative or conflicting standards or requirements.

Credit-based insurance scores are “Fair and Ethical”, they do not unfairly discriminatory towards any race, religion, gender, ethnicity, or other established suspect classes and there are studies that show the lack of illegal discrimination. In fact, credit-based insurance scores do not consider characteristics such as race, ethnicity, gender, national origin or income level. A myth of illegal discrimination pervades many media accounts and public policy debates, but in truth, credit-based insurance scores do not promote redlining or other illegal insurance practices. The Federal Trade Commission (FTC) report to Congress on Credit-Based Insurance Scores and their impacts on consumers of Automobile Insurance noted this as well.

The FTC found “Credit-based insurance scores are effective predictors of risk under automobile policies. They are predictive of the number of claims consumers file and the total cost of those claims. The use of scores is therefore likely to make the price of insurance better match the risk of loss posed by the consumer”. The FTC also noted that “Credit-based insurance scores appear to have little effect as a ‘proxy’ for membership in racial and ethnic groups in decisions related to insurance” and “the relationship between scores and claims risk remains strong when controls for race, ethnicity, and neighborhood income are included in statistical models of risk”.¹ We believe the FTC’s findings are easily transferable and applicable here.

We recognize the important goal of the regulator in seeking to understand how the individual components of the rating plan interrelate to produce a consumer's premium, however, the Transparency principles present confidentiality concerns in that they seem to have a broader reach than AI products, implicating a broader reach into predictive models and the appropriate uses of external data raising concerns of proprietary information exposure.

1 Federal Trade Commission (FTC), [“Credit-Based Insurance Scores: Impacts on Consumers of Automobile Insurance: A Report to Congress By the Federal Trade Commission”](#), 2007.

If the transparency guidelines are meant to include information relating to the scoring models that CRAs use to create CBIS, there would be a significant new regulatory burden on CRAs and this would impede the relationship between insurers and consumers. These new burdensome requirements can inject unnecessary friction on to consumers who seek quick decisions and competitive prices from their insurers. Along with heightening the risk of disclosing proprietary information that is currently kept confidential because of its importance.

We understand no information should be confidential from the regulators themselves. However, if the CBIS models are reviewed and accepted elsewhere, it would seem that a repetitive and costly process is occurring for not much if any added value to the final product for the consumers. The credit reporting system is a consistent nationwide process. Exposing individual characteristics of scoring models to public record requests allows competitors access to information that they can use to gain an unfair advantage over another company. It also reduces the incentive to continue to create new solutions, reducing a competitive environment, which ultimately hurts consumers. Regulators should be able to know whether scoring models are in compliance with the law, but this information should not be accessible as a public record. The acknowledgement in the draft principles that AI Actors need to have the ability to protect proprietary information is appreciated. We request that the draft principles also acknowledge that any laws or regulations drafted following the Principles on Artificial Intelligence be drafted in a way that recognizes the importance of protecting proprietary information and the contribution to a competitive marketplace such protection fosters.

Credit Based Insurance Scores are constructed using nationwide data sets. Scoring or grading their performance out at a state level may not be supported or accurate with this approach. It is also a common occurrence for certain contracts to prevent model providers from sharing distinct or customer specific data with third parties. There are several factors besides credit information and CBIS that go into the underwriting and rating setting process. Credit Information and CBIS may be the only ones that are consistent and transferrable across the country, while some of the other factors used can and do differ greatly on a state by state basis.

The insurance industry has been using CBIS models for decades and they have been approved by nearly every state's insurance department for auto and home insurers. The lack of trade secret and proprietary information protection will always remain a source of concern. In the long run we see this as something only large insurers will be able to absorb and the small to medium sized insurers that rely on third parties help will get squeezed out. We strongly believe that this will give large insurers a competitive edge in the marketplace. This will come at great cost to the consumers when their options decrease because of the eventual lack of competition.

In conclusion, we believe the current regulations and protections in place on CRAs at both the federal and state levels address Insurance Regulators' concerns as embodied by the draft principles. Any additional regulations on CRAs as AI Actors jeopardize the existing protections already afforded to consumers and have the potential to cause economic harm both consumers and the companies they do business with. Artificial intelligence and the use of external data in underwriting and rating are deserving of careful thought. That is not likely to change in the foreseeable future.

Thank you for the consideration of our comments and I would be happy to answer any questions you may have.

Sincerely,

Michael Carone

Michael Carone
Manager of Government Relations

cc: Members of the NAIC Artificial Intelligence (EX) Working Group (AIWG).
Denise Matthews, NAIC Staff

July 20, 2020

Commissioner Jon Godfread, Chair
NAIC Innovation and Technology (EX) Task Force
c/o Denise Matthews – dmatthews@naic.org
1100 Walnut Street, Suite 1500
Kansas City, MO 64106-2197

Re: NAMIC comments on the NAIC Principles on Artificial Intelligence

Dear Commissioner Godfread and Task Force Members,

Please find herein comments on behalf of the National Association of Mutual Insurance Companies (hereinafter “NAMIC”)¹ regarding the NAIC Principles on Artificial Intelligence (“Principles”). NAMIC wants to thank the task force for the ability to provide comments and be engaged on the AI Principles process and their ultimate relation to the insurance industry.

It is an understatement to say that our nation has experienced unprecedented crises during 2020 in dealing with COVID-19 and the tragic events that have led to a critical examination of racism and discrimination in America. NAMIC respects the NAIC and their effort to respond to those concerns that are evolving on the national stage as it relates to discrimination and insurance. NAMIC wants to be clear that we and our members are adamantly opposed to discrimination against any protected class and unfair discrimination in general. We do not support any acts that are intended to single out protected classes for special or unfavorable treatment. We stand with the NAIC in opposition to this behavior and will strongly support any efforts to halt, remove, or cease such conduct in any manner.

At the same time, NAMIC is strongly supportive of risk-based pricing for insurance products, which has existed for many years and which is essentially the best and most fair way to price insurance products. In fact, we believe that careful pricing based solely on risk – when coupled with the fact that insurers do not capture data concerning race or most other protected classifications – provides an antidote to the potential for race-based discrimination in insurance. Therefore, anything that could potentially lead to the elimination of risk-based pricing is of great concern to NAMIC and its membership – and should be of great concern to those that want to prevent unfair discrimination in America.

¹NAMIC membership includes more than 1,400 member companies. The association supports regional and local mutual insurance companies on main streets across America and many of the country’s largest national insurers. NAMIC member companies write \$268 billion in annual premiums. Our members account for 59 percent of homeowners, 46 percent of automobile, and 29 percent of the business insurance markets. Through our advocacy programs we promote public policy solutions that benefit NAMIC member companies and the policyholders they serve and foster greater understanding and recognition of the unique alignment of interests between management and policyholders of mutual companies.



Ultimately, this concern is the foundation of the association's comments on the AI Principles. As a high-level guiding principles document to be used for future NAIC workstreams, we understand and appreciate that the NAIC wishes to set aspirational goals and then move toward them. And we understand and appreciate that one of these aspirational goals is to ensure that artificial intelligence is not used to conceal or in other ways allow for unfair discrimination. Our fundamental concern is that in pursuing what NAMIC regards as a correct and appropriate goal, the AI Principles utilize the complex, undefined, and granular term "proxy discrimination." Suffice it to say, this is a concept that does not enjoy a universal definition.

NAMIC's members believe strongly that their policyholders are best protected and served by defending legitimate and legally supported insurance business operations which have nothing whatsoever to do with intentionally harming any individual. Ultimately, we would recommend not including in the AI Principles this type of undefined language, even in an aspirational document. At the very least, we would strongly encourage the task force to pair any use of "proxy discrimination" with a strong statement in support of risk-based pricing. This is of concern since the available literature and comments from consumer advocates suggests that the NAIC and state regulators should promote the elimination of certain objective, rational, and facially neutral risk-based rating factors, and/or encourage the collection by insurers of historically prohibited protected class information for "proactive" use.

Further, we would encourage the task force to remove "seeking recourse" from the Transparent section b, which could encourage litigation when it might be unwarranted. As for the other technical aspects of the language of the Principles, we would simply reiterate and refer you to what was stated in our comments to the AIWG at the end of June.

This discussion is not simply academic. Others look to NAIC publications, aspirational or otherwise, for usage in various endeavors, including litigation and administrative reviews. The language of the AI Principles may carry weight or be used in a manner inconsistent with the intent of the NAIC, causing confusion, disruption, and other unintended consequences. Further, grants of discretion around undefined concepts are likely to lead to regulatory compliance issues, which could cause market stability issues and ultimately negatively undermine the protection of insurance consumers. Therefore, we encourage as a best practice, the use of terms solidly grounded in existing state law, such as "unfair discrimination."

NAMIC is mindful that the public discussion on race and discrimination should and must continue. That said, given the importance of the issue and the possible impacts, we do have concerns with the potential pace of sweeping changes to the insurance regulatory landscape. In particular, in the push to tackle these difficult but important problems, we encourage the NAIC and regulators to be wary of unneeded alteration to regulation that is already legally sufficient and clear and operates to the consumer's benefit. We are certain that the NAIC does not want unintended consequences from their activity. However, this is such an important discussion, we believe all participants should be cognizant of the pace of these deliberations so that any needed change is done right.



Unfortunately – but understandably – there has been only limited time to discuss the consumer-friendly and exponentially positive aspects of artificial intelligence. Whether it be enhanced and rapid consumer response, increased claim response times that are already within legal requirements, fraud detection, triage of claims development, incentivization of risk avoidance, or more customer personalization based on the use of more predictive, facially neutral factors, artificial intelligence is transforming the consumer experience. While regulators should set guardrails and perform appropriate oversight of its use, we should be encouraging valuable and legitimate insurance products getting to market, to the ultimate benefit of the policyholder.

In closing, we would reiterate that NAMIC members want what is best for their policyholders, and do not condone any unfair discrimination against protected classes. Therefore we want to assist the NAIC and the task force in helping to root out such unfair discrimination where it is found; we believe the path to accomplishing this goal runs directly through a better understanding and definition of what is being contemplated by the use of certain terminology such as proxy discrimination. We believe that areas of agreement can be readily found, though additional discourse is needed. We want to thank you for consideration of our comments in this regard and for your commitment to consumer protection that we and our members likewise share with you.

Sincerely,

Andrew Pauley, CPCU

Government Affairs Counsel

National Association of Mutual Insurance Companies (NAMIC)