Comments of the Center for Economic Justice

To the NAIC Antifraud Technology Working Group

Regarding Proposed Revisions to the Antifraud Plan Guideline

September 8, 2020

The Center for Economic Justice (CEJ) offers the following comments the Antifraud Technology Working Group regarding proposed revisions to the Antifraud Plan Guideline as set out in the August 3, 2020 exposure draft.

As background to our comments, we draw the working group's attention to the NAIC's recent adoption of NAIC Principles on Artificial Intelligence (AI).[1] The AI principles are intended to "assist regulators and NAIC committees addressing insurance-specific AI applications." The principles address issues of fairness and ethical practice, accountability to stakeholders, compliance with laws and regulation, transparency to stakeholders and safety and security of AI systems.

Given the heavy reliance of insurers' antifraud programs on big data analytics, predictive models and AI, the revisions to the Antifraud Plan Guideline should consider and reflect the NAIC's AI Principles.

Specifically, the Antifraud Plan Guideline should address "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 remediates such consequences when they occur."

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[1] See materials for NAIC Exec/Plenary Session at page 3:
https://content.naic.org/sites/default/files/national_meeting/EXPlenary%20FINAL%20Materials%20for%20Posting.pdf

And, "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."

And "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. AI actors must have the ability to protect confidentiality of proprietary algorithms, 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.

In addition to the NAIC's adoption of AI Principles, the NAIC has also committed to address systemic racism and inherent bias in insurance. Antifraud efforts are particularly susceptible to practices that reflect and perpetuate historic discrimination against communities of color due to biases in data, modelers and historic practices. For example, if historic antifraud practices unfairly discriminated against communities of color, then AI based on these historic data will reflect and perpetuate that historic discrimination. The problem is particularly acute for antifraud because of the self-fulfilling prophecy nature of antifraud – if communities of color are disproportionately targeted for antifraud investigations then there will be a disproportionate number of claims identified as fraudulent from these communities.

With this background, CEJ suggests the following revisions to the August 3, 2020 exposure draft of the Antifraud Plan Guideline by adding a new section a new part to Section 4 or by incorporating these provisions into existing parts of Section 4.

(X)   A description of the insurers' policies and practices regarding use and protection of consumer data and antifraud predictive models and artificial intelligence, including

(a)   Proactive efforts to avoid proxy discrimination against protected classes including training for personnel in the auditing and detection of unfair bias in data, algorithms and antifraud personnel;

(b)   Analyzing data and algorithms for the presence of systemic racism and inherent bias against protected classes and minimizing these effects consistent with the sound antifraud practices;

(c)   Consumer data protections consistent with the protections of the Fair Credit Reporting Act, including disclosure, adverse action notice, access to contested data, ability to correct erroneous data and reconsideration based on corrected data;

(d)   Protection of personal consumer data;

(e)   Transparency and explainability of algorithms and algorithmic decisions to stakeholders.

Thank you for your consideration of our comments.