The National Association of Insurance Commissioners
Statement for the Record

House Financial Services Subcommittee on Oversight and Investigations
Hearing on
Examining Discrimination in the Automobile Loan and Insurance Industries

May 1, 2019

On behalf of the primary regulators of the U.S. insurance sector, the National Association of Insurance Commissioners (NAIC)[1] appreciates the opportunity to submit this written statement. We appreciate the Subcommittee's interest and attention to this important issue. Addressing unfair treatment of insurance consumers is central to the work we do and a responsibility we take seriously.

Insurance regulators have robust authority to address potential instances of unfair treatment of consumers, including those related to protected classes. Specifically, insurance regulators have authorities to address discriminatory practices in underwriting and ratemaking. Insurance companies use rating factors that are correlated with the risks of the insurance policyholder in order to set actuarially sound pricing. This process involves insurance companies establishing risk classifications to differentiate insurance consumers who will experience different levels of expected loss. However, the state insurance regulatory framework recognizes that certain risk classifications, even when accurately correlated with risk and effective from a purely actuarial perspective, may be inconsistent with public policy and therefore specifically provides regulators the authority to ensure that rates are not "excessive, inadequate, or unfairly discriminatory."[2] This authority is intentionally broad and designed to ensure that certain characteristics are not used to set rates. In addition, states have significant authority under their unfair trade practice statutes to address other types of discriminatory practices. These statutes, based on the NAIC *Unfair Trade Practices Model Act*, prohibit insurers from refusing to insure, refusing to continue to insure, or limiting the amount of coverage available to an individual because of race, sex, marital status, religion or national origin.[3]

To help implement these statutory authorities, state insurance regulators have tools designed to identify problematic activity. With the exception of Illinois, all states have rate approval processes either through a "prior approval process" or a "file and use" process.[4] The NAIC Market Regulation Handbook also contains standards for the examination of unfair discrimination in underwriting and rating. Among other review procedures, the Handbook sets forth guidance for the review of relevant underwriting information to ensure that no unfair discrimination is occurring. The regulated entity must have underwriting guidelines that conform to state laws, must follow them consistently and must not treat protected classes of individuals unfairly. Regulators are advised that inconsistent handling of rating or underwriting

[1] Founded in 1871, the NAIC is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia and the five U.S. territories. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer review, and coordinate their regulatory oversight. NAIC members, together with the central resources of the NAIC, form the national system of state-based insurance regulation in the U.S.
[2] Section 4.A of NAIC *Property and Casualty Model Rating Law* (Prior Approval Version) and Section 5.A of NAIC *Property and Casualty Model Rating Law* (File and Use Version).
[3] Section 4.G(5) of the NAIC *Unfair Trade Practices Act*.
[4] Some states have a "use and file" framework. The "file and use" and "use and file" are similar in terms of regulatory oversight. Illinois is the only state that does not have a rate approval process.

practices, even if not intentional, can result in unfair discrimination, including requests for supplemental information. According to NAIC data, from 2007 to 2018, states conducted 523 examinations pertaining to "underwriting discrimination," "rating discrimination," or "use of prohibited rating factors." State regulators found 51 instances where 32 different companies were non-compliant and took action accordingly.[5]

Moreover, state regulators recently enhanced their toolkit specifically as it relates to auto insurance by collecting ZIP Code level data from statistical agents. All states now have access to the data in a tool that takes the 12 million plus records and makes them easier to analyze. Regulators can select a region, city, or ZIP Code and look at coverage type and see the average premium, frequency, severity and losses in that area. They can also pull in a demographic area and look at metrics like average income in that ZIP, etc. If states see anomalies or reason for concern including potential instances of unfair discrimination, they can follow up and look at individual company data. The NAIC is also completing a public report that will show maps at a ZIP Code level in every state for the same metrics. The report will show income quantiles in order to exhibit average premiums, frequency and severity for each. This will provide additional data to regulators at a more granular level in order to understand low-income populations so they may better evaluate risk assessment by insurers.

While insurance regulators currently have broad authorities to address unfair treatment of consumers, we also acknowledge that insurance rating and underwriting have become increasingly more complex with the advent of complex algorithms and emerging use of artificial intelligence. Though technological advancements have the propensity to more accurately price insurance products for individuals with varying risks, which can reduce costs and benefit consumers, state insurance regulators have recognized the complexity of these processes and the need to ensure they comply with state insurance laws and regulations designed to protect consumers from illegal practices. To that end, state insurance regulators, through the NAIC, have been exploring insurers' use of big data for claims, marketing, underwriting and pricing to encourage innovation while maintaining appropriate consumer protections. One of the current work streams is a proposal to explore options for helping regulators review complex models used in support of auto and homeowner insurance rate filings. We recently broadened our focus to explore the use of data for underwriting life insurance products and state market conduct examination practices for the review of life insurance underwriting. Future discussions will turn toward the use of data and models for claims settlement and fraud detection.

In conclusion, state insurance regulators appreciate the work of the Oversight and Investigations Subcommittee to explore issues of discrimination in auto insurance. Preventing unfair behavior is central to regulators' core mission of consumer protection and we remain committed to continuing to address this important issue through our supervision of the insurance sector. Thank you for allowing us the opportunity to provide this statement for the record.

[5] This is based on data voluntarily submitted by member jurisdictions to the NAIC. States maintain their own data relating to examinations, rate filing reviews and specific enforcement actions.