

INNOVATION AND TECHNOLOGY (EX) TASK FORCE

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Draft Pending Adoption

Draft: 8/25/20

Innovation and Technology (EX) Task Force
Virtual Summer National Meeting
August 7, 2020

The Innovation and Technology (EX) Task Force met Aug. 7, 2020. The following Task Force members participated: Jon Godfread, Chair, and Chris Aufenthie (ND); Elizabeth Kelleher Dwyer, Vice Chair (RI); Lori K. Wing-Heier represented by Chris Murray (AK); Jim L. Ridling represented by Jerry Workman and Gina Hunt (AL); Alan McClain and Letty Hardee (AR); Elizabeth Perri (AS); Evan G. Daniels and Erin Klug (AZ); Ricardo Lara and Lucy Jabourian (CA); Michael Conway (CO); Andrew N. Mais (CT); Karima M. Woods (DC); David Altmaier (FL); Colin M. Hayashida (HI); Doug Ommen (IA); Dean L. Cameron (ID); Robert H. Muriel (IL); Stephen W. Robertson represented by Jerry Ehlers (IN); Vicki Schmidt represented by LeAnn Crow (KS); Sharon P. Clark (KY); James J. Donelon (LA); Gary Anderson (MA); Kathleen A. Birrane (MD); Eric A. Cioppa represented by Ben Yardley (ME); Anita G. Fox (MI); Steve Kelly represented by Tammy Lohmann, Grace Arnold and Phil Vigliaturo (MN); Chlora Lindley-Myers and Cynthia Amann (MO); Mike Chaney and Andy Case (MS); Matthew Rosendale represented by Steve Matthews and Jeannie Keller (MT); Mike Causey represented by Tracy Biehn (NC); Bruce R. Ramage (NE); Chris Nicolopoulos represented by Christian Citarella (NH); Marlene Caride represented by Mark McGill and Carl Sorenson (NJ); Barbara D. Richardson (NV); Jillian Froment (OH); Glen Mulready represented by Cuc Nguyen (OK); Andrew R. Stolfi (OR); Jessica K. Altman and Michael Humphreys (PA); Raymond G. Farmer (SC); Larry D. Deiter (SD); Hodgen Mainda (TN); Kent Sullivan represented by Doug Slape and Michael Nored (TX); Scott A. White and Rebecca Nichols (VA); Michael S. Pieciak represented by Anna Van Fleet (VT); Mike Kreidler and Molly Nollette (WA); Mark Afable (WI); and James A. Dodrill (WV). Also participating was: My Chi To (NY).

1. Adopted its July 23, 2020, and 2019 Fall National Meeting Minutes

Commissioner Altman made a motion, seconded by Ms. Biehn, to adopt the Task Force's July 23, 2020 (Attachment Five) and Dec. 6, 2019 (see *NAIC Proceedings – Fall 2019, Innovation and Technology (EX) Task Force*) minutes. The motion was unanimously adopted.

2. Adopted its Working Group Reports

Commissioner Godfread asked for reports from the Task Force's working groups.

a. Big Data (EX) Working Group

Commissioner Ommen said the Big Data (EX) Working Group met Aug. 4 and adopted its 2019 Fall National Meeting minutes and received an update from the Casualty Actuarial and Statistical (C) Task Force (CASTF). He said the CASTF is drafting a white paper, *Regulatory Review of Predictive Models*, to provide best practices for the review of predictive models and analytics filed by insurers to justify rates.

Commissioner Ommen said state insurance regulators have the responsibility to review and evaluate the advancing uses of technology, modeling techniques and the application of models in insurance and the priority question being addressed is whether state insurance regulators can determine whether predictive models, as used in rate filings, are compliant with state laws and regulations. He said the white paper includes an update on the development of the best practices for evaluating the use of variables and predictive modeling, noting the four best practices for regulatory review outlined in the white paper are to: 1) ensure compliance with state rating laws; 2) review all aspects of a model (data assumptions, adjustments, variables, inputs and outputs); 3) evaluate how a model interacts with and improves the rating plan; and 4) enable competition and innovation.

Commissioner Ommen said the white paper references the concept of "rational explanation" that refers to a plausible narrative connecting the variable and/or treatment in question with real-world circumstances or behaviors that contribute to the risk of insurance loss in a manner that is readily understandable to a consumer or other educated layperson. He said the white paper indicates that a "rational explanation" does not require strict proof of causality but should establish a sufficient degree of confidence that the variable and/or treatment selected are not obscure, irrelevant, or arbitrary.

Commissioner Ommen said the latest draft of the white paper was exposed June 12 and the CASTF is now reviewing the latest round of comments and plans to present the white paper to the Property and Casualty Insurance (C) Committee in September.

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Commissioner Ommen noted that the white paper has been prepared more in the context of generalized linear models (GLMs) and similar systems that could be described as “static” models or algorithms, which are now more commonly found in insurance rate filings, although the best practices would also apply to models that also involve artificial intelligence. He said the “NAIC Principles for artificial intelligence (AI)” (AI Principles), which will be considered by the Innovation and Technology (EX) Task Force later in this meeting, more narrowly apply to a subset of developing innovative modeling that could be described as “more dynamic” due to the addition of AI to the modeling.

Commissioner Ommen said the Big Data (EX) Working Group also received an update from the Accelerated Underwriting (A) Working Group, noting that another important workstream initiated by the Big Data (EX) Working Group is the NAIC technical and nontechnical rate review trainings. These trainings started Nov. 13, 2019, and ended in June 2020. He said state insurance regulators received technical training in exploratory data analysis and statistical techniques insurers are using to develop property and casualty risk classification and rating plans and the training also covered specific advanced statistical techniques including GLMs, generalized additive models (GAMs), gradient boosted trees, random forest ensembles and decision tree models. He said that in addition to the more advanced technical training, the NAIC sponsored two non-theoretical, practical webinars, designated as “nontechnical webinars.” Moving forward, the NAIC plans to provide training targeted specifically to market conduct examiners.

Commissioner Ommen said the Big Data (EX) Working Group also received a brief update on NAIC technical services to state insurance regulators for the review of property/casualty (P/C) rate models, noting that state insurance regulators will be able to share information through a confidential model database and obtain NAIC technical assistance when reviewing a specific company’s filed P/C rate model. He said there will be no change to rate regulatory authority and autonomy of each individual state and no change to state confidentiality laws, noting that state insurance regulators will continue to abide by state laws.

b. Speed to Market (EX) Working Group

Ms. Nichols reported that the Speed to Market (EX) Working Group met July 15, June 30 and June 15 via conference call. During its June 15 conference call, the Working Group heard updates regarding the NAIC System for Electronic Rates and Forms Filing (SERFF) Advisory Board and SERFF metrics, as well as an update from the Interstate Insurance Product Regulation Commission (Compact.)

Ms. Nichols said, in addition to hearing updates, the Working Group discussed the suggestion to create a SERFF canned report for rate changes. She said that after hearing comments from Working Group members, interested regulators and interested parties, the Working Group adopted the suggestion, noting that the parameters for this report will be discussed during the Working Group’s Aug. 27 conference call. She said the last item discussed during the June 15 conference call was the SERFF State Reports document, noting that any suggested revisions or additions will be discussed during a future call.

Ms. Nichols said the Working Group discussed changes to the Life, Accident/Health, Annuity and Credit Uniform Product Coding Matrix (PCM) and Uniform Transmittal Document on its June 30 conference call, noting that two of the suggested changes were adopted. She said the first was to change the term “implementation date” to “effective date” on the Uniform Transmittal Document within the SERFF “General Information” area and on the disposition letter; the second was to add a sub-type of insurance (TOI) for “expatriate plans” under H15G and H15I, which are the TOIs used for group health and individual health plans for hospital/surgical/medical expense. She said the description for this new sub-TOI would be: “expatriate plans that are not required to comply with all state or federal mandates for health benefits,” noting that these changes will be effective Jan. 1, 2021.

Ms. Nichols said that during its July 15 call, the Working Group, interested regulators and interested parties discussed the suggestions for changes to the Uniform Property & Casualty PCM and Uniform Transmittal Document, but the Working Group did not adopt any of the suggested changes. She said the Working Group adopted its June 30 and July 15 minutes via e-vote.

c. Artificial Intelligence (EX) Working Group

Commissioner Godfread provided the report of the Artificial Intelligence (EX) Working Group. He said the Working Group met during the 2019 Fall National Meeting and discussed comments related to how to start the process for developing the AI Principles for the insurance industry. He said the decision was to use the Organisation of Economic Co-operation and Development (OECD) principles as a basis and a draft was exposed for a public comment period ending in January 2020, followed by conference calls held June 30, June 3, May 5, Feb. 19 and Feb. 4. Numerous suggestions from many different stakeholders were discussed and many incorporated into the AI Principles, where was ultimately adopted during the Working Group’s June 30 conference call. He said the Task Force will be considering the AI Principles later in this meeting.

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Commissioner Godfread asked if there were any questions regarding any of the Working Group reports. Hearing none, Commissioner Mais made a motion, seconded by Commissioner Conway, to adopt the following reports: 1) Big Data (EX) Working Group, including its Aug. 4 minutes (Attachment One); 2) Speed to Market (EX) Working Group, including its July 15, June 30 and June 15 minutes (Attachment Two); and 3) Artificial Intelligence (EX) Working Group, including its June 30, June 3, May 5, Feb. 19 and Feb. 4 minutes (Attachment Three). The motion passed unanimously.

3. Heard an Update on the Innovation and Technology State Contacts Group

Denise Matthews (NAIC) provided an update on the activities of the Innovation and Technology State Contacts group. She said the group has not been as active as in 2019 given other priorities, but it does continue to meet. She noted the following:

- The state contact names and contact information is posted on the NAIC website, so if a state has a change regarding that position, send the changes to Ms. Matthews so they can be updated.
- The group held three webinars in June. They were:
 - AAIS: Livraria/Kira workflow tool (June 2).
 - Verisk: Mozart workflow tool (June 4).
 - Theta Lake's Compliance AI tool (June 8).
- There will be a contacts roundtable meeting Sept. 16 during the NAIC/NIPR Insurance Summit.

Ms. Matthews said one topic the group will consider is to identify what digital or other types innovations deployed or that experienced accelerated deployment as a result of COVID-19, will likely continue and what, if any, related regulatory implications would be of interest to discuss. She said she would be reaching out to industry trade groups and other interested parties to share experiences to help further that discussion.

4. Adopted the AI Principles

Commissioner Godfread said the next agenda item is to discuss the AI Principles document, which was adopted by the Artificial Intelligence (EX) Working Group during its June 30 conference call. He said he previously provided a brief recap regarding the work of the Working Group and an overview of the process, noting that there has been a great deal of discussion since the first draft of the AI Principles was exposed in January 2020. He said there were four calls specific to the draft, as well as new drafts issued as that work progressed. He said the June 30 version of the AI Principles was exposed by the Task Force for a public comment period and those comments were discussed during the Task Force's July 23 meeting.

Commissioner Godfread thanked the stakeholders who participated throughout the process and said the issues are on the table and decisions now need to be made by the Task Force members regarding each. He said in order to expedite that process, he, working with Commissioner Afaible, Superintendent Dwyer and staff, put together a "decisions" document that was sent July 28 to Task Force members, interested regulators and interested parties. He said he would be taking this section by section and would request a vote at the end of each section discussion, but would be taking the proxy discrimination issue separately and then ending with a vote on the overall AI Principles as amended during the process.

a. Amendments to the Introductory, Preamble Section

Commissioner Godfread began by introducing the outstanding issues related to the introductory language. He said there is a suggestion to add "data providers" to the opening paragraph, add the word "fair" after the word "secure" in the second paragraph, a request to further define "AI actors" and remove the words "from harm" in the last sentence of the third paragraph.

Commissioner Mais said he supports Commissioner Godfread's suggestions that "data providers" and "fair" be added, "AI actors" not be further defined and "from harm" be removed.

Commissioner Godfread further clarified that he does not consider that adding "data providers" to this document implies that state insurance regulators would be regulating third-party data providers but that adding the language essentially draws their attention to this document that is intended for use within the insurance industry. He said it should put data providers on notice that these are the principles for use within the insurance industry.

Superintendent Toal made a motion, seconded by Superintendent Dwyer, to add "data providers," "fair" and remove "from harm" from the introductory language. The motion was unanimously adopted.

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b. Amendments to the Fair and Ethical Section Not Related to the Proxy Discrimination Issue

Commissioner Godfread said there is a suggestion regarding changing the word “unfair” to “unlawful” under the Fair and Ethical section. He said he would be opposed to making that change and asked for discussion.

Commissioner Conway said he would be opposed to that change, as well. He said the term “unfair discrimination” is used throughout the statutory structure and to change “unfair” to “unlawful” would cause confusion and lead to problems.

Commissioner Ommen agreed with Commissioner Conway and said the two principles of unfair discrimination are that similar risks are to be treated the same and protected class data is not to be used in the rating process. As such, if the concept of unlawfulness it introduced, it would lead to 56 jurisdiction interpretational differences.

Commissioner Mainda agreed and said changing “unfair” to “unlawful” brings about the thought of rule of law and that is not the direction of this document, which is more of a guidance document. He said he would support leaving it as “unfair.”

Commissioner Godfread said there did not seem to be support for this change, but asked if anyone would like to make a motion to adopt this change. Hearing none, he continued.

c. Suggested Language Related to the Proxy Discrimination Issue in the Fair and Ethical Section

Commissioner Godfread drew the Task Force member’s attention to the document provided and asked if the members wanted to make any changes to the proxy discrimination language in the draft. He said the discussion document outlines a summary of the language suggested to the Task Force via the comment letters. He said there three options are provided. He said the suggested language is a nod to understanding insurance is built on a cost- or risk-based foundation and he opened it up for discussion.

Commissioner Mais said he was in favor of leaving the language as-is in the draft, but the second option, including the words “Consistent with the cost-based foundation of insurance” does accomplish the intended purpose and reassures everyone that it is recognized that this is a cost-based industry, so he would support that language.

Ms. Nollette said Washington state supports the amended language and believes it is appropriate.

Commissioner Ommen said he supports the amended language but asked if it should be “cost-based” or “risk-based.” He asked if “risk-based” was discussed by the drafters, as it is typically the term he has heard used.

Commissioner Godfread said it was discussed and the intention was to use the broader term and to encompass more than ratemaking, but said he would be open to either term. He said it should be reflected in the minutes that it is intended to be the broader term that encompasses the entirety of the foundation of insurance.

Commissioner Ommen said in part it has to do with the context, and rating systems deal with losses and expenses and traditional factors tied to risk, but part of this deals with issues associated with other aspects of insurance such as marketing, fraud detection and others. He said he would be agreeable to “cost-based,” given the more general application of AI.

Commissioner Clark asked if consideration should be given to just saying, “Consistent with the foundation of insurance.”

Commissioner Godfread said the drafters did not discuss that but would be open to discussion by the Task Force members.

Commissioner Afbale said this issue was discussed by the drafters, noting that he believes “risk-based” is the broader term, but one of the two terms should be in the AI Principles and is important to clarify the intent.

Commissioner Godfread said the minutes will reflect the intention is that it is to be applied broadly.

Mr. Keen said the Option Two language is appropriate and he generally believes “risk-based” to be the broader term.

Commissioner Anderson agreed with Mr. Keen and said it may also capture what Commissioner Clark was talking about, as well, so he would support that language.

Commissioner Conway made a motion, seconded by Commissioner Ommen, to add the proposed language and change the word “cost-based” to “risk-based,” so it would read, “Consistent with the risk-based foundation of insurance....”

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Superintendent Dwyer asked for clarification that the intention is for this language to include claims, as well as rating. Commissioner Godfread said that it does and, hearing no further discussion, called for the vote on the motion. The motion was unanimously adopted.

d. Amendments to the Accountable Section

Commissioner Godfread said there is a request to remove the last sentence in the Accountable section. He said it was added to provide some type of a “safe harbor” for the good actors in this space who do everything the right way and with good intentions, acknowledging there will be some grace given if mistakes are made, recognizing this is new technology and is being used in new ways which can result in unanticipated mistakes. He said that was the thinking behind adding that sentence. He said it may be a bit repetitive, as state insurance regulators consistently consider the entirety of the situation before acting.

Commissioner Mais said his concern is two-fold, the first being that this is a guidance document and is intended to convey expectations regarding the need to correct or compensate for consequences when they occur and we understand there will be some that may be harmful. He said state insurance regulators have the responsibility to look at the situation and act within the context, responding accordingly; however, this document should not limit or put restrictions on the authority of state insurance regulators. He said the last sentence in the Accountable and Compliant sections both are strongly directed at state insurance regulators and they do not belong in this type of document. He said the thought behind the suggested change in the Fair and Ethical section to add “and corrects and compensates such consequences when they occur” is intended to address that. He said he strongly believes AI can be a positive force and if he thought not having this language would stunt the growth of AI, he would be opposed to removing it; however, those two “safe harbor” sentences at the end of the Accountable and Compliant sections do not need to be there.

Commissioner Godfread asked Commissioner Mais to confirm that it is his preference to remove this language and go back and address this under the Fair and Ethical section. Commissioner Mais confirmed that to be correct.

Superintendent Dwyer agreed with Commissioner Mais and said she does not like the sentence, as negligence means there is a duty and a breach of that duty, and it is unclear what this language does. She said it tries to create a “safe harbor” but she does not believe it accomplishes that, so she would agree to go back to the Fair and Ethical section and add language suggested by Director Ramage.

Commissioner Conway said if there needs to be a statement like this, it belongs in the Accountable section. He said if the concept is to say that a good actor will not be hit with penalties, it seems like it should be incorporated into the Accountable section.

Commissioner Godfread said he could go either way. He said he leans toward putting it in the Accountable section, but he believes it fits in either place.

Commissioner Ommen said part of the issue is this is a guidance document and this seems to be mixing in a requirement for companies and data providers to comply with the law and additional responsibility in terms of fair and ethical behaviors that may go beyond current law. He said part of the problem is negligence is not the issue, but trying to avoid an algorithm or AI that contains inherent bias or that perpetuates or makes worse bias. He said the duty is to avoid that, but there is not currently a law related to it, so he said he agrees with Commissioner Mais, as this a guidance document and not a regulation.

Commissioner Anderson said he understands the concern, but said this happens and the aim is to remediate so if that can be captured in the Fair and Ethical section, like suggested, it would be the best way to capture this.

Ms. To said she would echo those comments, adding that she supports Commissioner Mais’ suggestion to delete the sentence. She said these are guiding principles and the difficult work lies ahead to implement and operationalize them. She said it will take everyone coming to the table with an open mind and a lot of trust. She said she understands the importance but does not believe this type of language is needed.

Commissioner Mais made a motion, seconded by Superintendent Dwyer, to delete the last sentence in the Accountable section and add language to the Fair and Ethical section part b, replacing the word “compensates” with “remediates” to read, “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 for such consequences when they occur.” The motion was unanimously adopted.

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e. Amendments to the Compliant Section

Commissioner Godfreed said there is a suggestion to delete the last sentence in the Compliant section.

Superintendent Dwyer said she would propose replacing it with, “Use of AI does not create or change any existing statutory or regulatory requirements.” Commissioner Mais said that is the aim of that language, so he would support the new language.

Commissioner Conway asked if this language would impact some type of regulatory structure specific to AI created after these AI Principles are adopted. Superintendent Dwyer said the intent is that nothing changes that exists today, but it is not intended to impact anything that might be passed in the future specific to AI. Commissioner Conway said he was fine with that explanation.

Superintendent Toal said he has concerns with the language, as well, as this seems to be a broad statement and it is entirely possible there will be new regulatory requirements as a result of AI.

Superintendent Dwyer said an alternative is simply to delete the last sentence. She said AI will change regulatory requirements and the intent is not to alter that.

Commissioner Conway agreed that deletion of the sentence would be preferable.

Commissioner Conway made a motion, seconded by Superintendent Toal, to delete the last sentence. Hearing no further discussion, Commissioner Godfreed called the vote. The motion was unanimously adopted.

f. Amendments to the Transparent Section

Commissioner Godfreed said there were some suggestions made by Connecticut that clean up some of the language in this section.

Commissioner Mais said the suggestions were mostly technical edits and he proposed taking out the words “including consumers,” as they were the only stakeholder group identified. He said he understands wanting to be sure consumers are included but, on balance, the language is better without that, as consumers do not need to be called out specifically and it may cause questions or confusion to do so.

Commissioner Mais made a motion, seconded by Director Ramge, to adopt the edits suggested by Connecticut, including removing the words “including consumers” and changing the second sentence to read, “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.” The motion was unanimously adopted.

g. Other Amendments

Superintendent Dwyer said Tom Considine (National Conference of Insurance Legislators—NCOIL) sent a text message to her indicating that NCOIL would like to comment on the introductory language. She said Mr. Considine said NCOIL suggests deleting the words “emphasizing the importance of accountability, compliance, transparency, and safe, secure, fair and robust outputs” from the end of the second paragraph in the introductory language. She said NCOIL is concerned those words make this more of a “practices” as opposed to a “principles” document.

Commissioner Conway said he struggles with that concern, because it says clearly that these principles are guidance and do not carry the weight of law or impose any legal liability.

Commissioner Ommen said he would support the change because just mentioning “outputs” is narrow, and state insurance regulators are interested in the inputs, as well as the outputs. He made a motion to change the word “outputs” to “systems.”

Superintendent Dwyer asked if Commissioner Ommen would prefer to end the sentence after “transparency,” as NCOIL’s suggestion is to end it after “systems.”

Commissioner Ommen said his intent is to leave in the change previously suggested by Connecticut and adopted by the Task Force to add the word “fair” and so that would be a problem with ending the sentence after “transparency.”

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Director Ramge asked if the word “outcomes” as opposed to “outputs” would work, but Commissioner Ommen said it does not. He said maybe saying “systems” again is redundant.

Commissioner Godfread said ending the sentence at “systems” does not change the intent, so he does not have a problem with doing that.

Mr. Considine said this paragraph makes clear this is a principles document that does not carry the weight of law, but despite that sentence, everything after “systems” detracts from that intent.

Ms. Jabourian recommended the sentence stay in because it is important to emphasize paying attention to the outputs, as well.

Indiana State Rep. Matt Lehman (R-Berne) said the concern is the word “however,” because that implies there is a list of things that would be more guiding issues as opposed to principles, so taking out that language does not change the document but makes the “however” not as strong.

Mr. Keen suggested removing the word “however” and leaving the sentence in. Commissioner Mais agreed with that suggestion. Commissioner Mainda agreed with Mr. Keen and Commissioner Mais.

Superintendent Dwyer said she understands the concern and agreed that Mr. Keen’s suggestion may resolve the issue.

Rep. Lehman said he was fine with that and, even though the language may be redundant, removing the “however” resolves the concern.

Superintendent Dwyer made a motion, seconded by Commissioner Altman, to remove the word “however.” The motion was unanimously adopted.

Superintendent Toal made a motion, seconded by Commissioner Conway, to adopt the “NAIC Principles for Artificial Intelligence (AI)” (*see NAIC Proceedings – Summer 2020, Executive (EX) Committee, Attachment Two-A*) as amended during the meeting. The motion was unanimously adopted.

5. Heard an Update from the Accelerated Underwriting (A) Working Group and Presentations on Algorithmic Auditing

Commissioner Godfread asked Director Muriel to provide an update regarding what the Accelerated Underwriting (A) Working Group has been working on over the past months, noting that it ties closely to issues the AI Principles serve to inform and potentially guide. He said the AI Principles are guideposts to the industry and, while they do not carry the weight of law, they will inform other workstreams where decisions, definitions and potentially regulations may need to be developed to monitor and oversee this space. He said, therefore, it is important for the Task Force to be informed and aptly coordinating these efforts to ensure that there is consistency and the AI Principles are appropriately embedded in those work products.

a. Accelerated Underwriting (A) Working Group Update

Director Muriel reviewed the charge and the work plan of the Accelerated Underwriting (A) Working Group and the presentations that have been made to the Working Group. He said the Working Group appointed two subgroups: 1) Ad Hoc NAIC Liaison Subgroup; and 2) Ad Hoc Drafting Subgroup. He reviewed the key questions the Working Group is seeking to answer, the input data for accelerated underwriting, how behavioral data is being used and existing legislation that plays a role, such as the federal Fair Credit Reporting Act, and outlined potential consumer concerns. Director Muriel then discussed the timeline for the Working Group deliverables.

b. Algorithm Auditing in Life

Chris Stehno (Deloitte) provided an update on algorithm auditing considerations in life insurance underwriting. He said using historical decision data to build an algorithm will teach it to make similar decisions in the future, and if past decisions included bias, then the algorithm will reproduce that bias. Mr. Stehno said disproportional representation of protected groups in available data can be equally harmful for protected classes, noting that model performance in the real world is never identical to performance on an initial training set. He said algorithms need to be comprehensively audited for fairness, explainability and robustness, noting that automated code checks and comprehensive methodology should be used to detect and correct hidden risks.

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c. Accelerated Underwriting and Evaluating the Risks

Patricia Matson (Risk and Regulatory Consulting—RRC) discussed traditional methods for life underwriting and the features of accelerated underwriting. She talked about the data elements used in accelerated underwriting now and what they would be in 10 years, as well as inherent risks related to accelerated underwriting. Ms. Matson provided an overview of how a company can test for these risks.

6. Discussed Anti-Rebating Amendments to Model #880

Commissioner Godfread asked Superintendent Dwyer to review the status of the work on Section 4H of the *Unfair Trade Practices Act* (#880) amendments related to anti-rebating.

Superintendent Dwyer said 21 comment letters were received on the language exposed by the drafting group. She said based on those comments, several changes were made to the draft (Attachment Four) to hopefully accommodate issues that appeared to be something the group would want to change. She provided an overview of some of the changes made, as well as some requested changes that were not included in the most recent draft.

Superintendent Dwyer said comments were received saying the words “value-added” introduced lack of clarity, so they were removed throughout the revised language, and the word “non-cash” was substituted, as it was recognized that nowhere in the document did it indicate that giving cash would not be allowed. She said it was suggested the word “specified” be changed to “provided,” noting that she would be interested in feedback on that suggestion. She said some changes were requested that were not made, including one related to unregulated third parties, keeping the insurer responsible, redrafting the section so the subsections are part of Section 1, and a suggestion that the word “related” was not specific enough, as there was no better suggested language provided. She said she is open to discussion related to these items. She said no change was made to require the product be added within the policy terms.

Superintendent Dwyer said there were comments related to the use of the words “primarily intended,” but the drafting group discussed that at length and when Rep. Lehman said NCOIL had discussed that at length and preferred “primarily intended,” that was chosen for the draft but she said, again, that she is open to alternative language.

Superintendent Dwyer said “loss mitigation” was added to Section 4H(2)(e)(1)(b)(1) and Section 4H(2)(e)(1)(b)(8) was rewritten. She said there were suggestions that Section 4H(2)(e)(1) through Section 4H(2)(e)(8) be limited to certain lines of insurance, but a line of insurance can mean different things in different states, so it may not be appropriate to do that; however, she said she is willing to discuss additional comments on that. She said the term “group” was requested in several of the comment letters, but it was not included in the most recent draft because of concerns in regard to abuses seen in the lender-placed and title insurance space, and the group did not want to create a situation like that again. She said Section 4H(2)(e)(3), Section 4H(2)(e)(4) and Section 4H(2)(e)(5) were written in an attempt to accommodate many of the comment letter suggestions, so she would ask the Task Force members to take a look at those, as well. She said there were comments related to using the term “policyholders,” so it was replaced with “clients” and that term is defined in the new draft language. She said she would welcome comments on that change. She said the new draft does not include a safe harbor for health insurers, as that did not seem warranted.

Superintendent Dwyer said Section 4H(2)(f)(1) was also rewritten and a drafting note added, as suggesting what the limits might be in terms of a static number appears problematic. She said it was suggested that charitable donations be put in a separate section, but no language was provided, so that has not yet been done. She said a subsection relating to things offered for “free” was added and there was agreement that offering insurance in connection with another policy would not be appropriate.

Superintendent Dwyer said this draft will be exposed for a public comment period ending Aug. 28 and then discussed during a future Task Force meeting.

7. Discussed the Privacy Protections (D) Working Group

Commissioner Godfread said the planned update from the Privacy Protections (D) Working Group would be provided during the next meeting of the Task Force.

Having no further business, the Innovation and Technology (EX) Task Force adjourned.

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Draft Pending Adoption

Draft: 8/20/20

Big Data (EX) Working Group
Virtual Summer National Meeting
August 4, 2020

The Big Data (EX) Working Group of the Innovation and Technology (EX) Task Force met via conference call Aug. 4, 2020. The following Working Group members participated: Doug Ommen, Chair (IA); Elizabeth Kelleher Dwyer, Vice Chair, (RI); Lori K. Wing-Heier (AK); Daniel Davis (AL); Ken Allen (CA); Andrew N. Mais and George Bradner (CT); Sharon Shipp (DC); Frank Pyle (DE); Sandra Starnes (FL); Robert H. Muriel (IL); Rich Piazza (LA); Kathleen A. Birrane (MD); Benjamin Yardley (ME); Karen Dennis (MI); Phil Vigliaturo (MN); Brent Kabler (MO); Christian Citarella (NH); Carl Sornson (NJ); Gennady Stolyarov (NV); Jillian Froment (OH); Andrew R. Stolfi (OR); Michael McKenney and Shannen Logue (PA); Michael Wise (SC); Rachel Cloyd and J'ne Byckovski (TX); Todd E. Kiser, Tanji Northrup and Reed Stringham (UT); Kevin Gaffney and Christina Rouleau (VT); Molly Nollette (WA); and James A. Dodrill (WV).

1. Adopted its 2019 Fall National Meeting Minutes

Mr. Vigliaturo made a motion, seconded by Mr. Bradner, to adopt the Working Group's Dec. 17, 2019, minutes (*see NAIC Proceedings – Winter 2019, Innovation and Technology (EX) Task Force, Attachment One*). The motion passed unanimously.

2. Received an Update on the Work of the Casualty Actuarial and Statistical (C) Task Force

Mr. Piazza said the Casualty Actuarial and Statistical (C) Task Force is working on two charges. The first charge is to draft and propose changes to the *Product Filing Review Handbook* to include best practices for the review of predictive models and analytics filed by insurers to justify rates. The second charge is to draft and propose state guidance for rate filings that are based on complex predictive models.

Mr. Piazza said state insurance regulators are trying to determine if a rating plan and model included in a rating plan are compliant with state laws and regulations. Mr. Piazza said there are four best practices for regulatory review based upon regulatory expertise in the review of generalized linear models (GLMs) used in private passenger automobile insurance. The first is to ensure compliance with rating laws by reviewing the overall rate level impact of the proposed revisions and determine that individual input characteristics to a predictive model and their resulting rating factors are related to the expected loss or expense differences in risk. The second practice is to obtain a clear understanding of the data used to build and validate the model, including assumptions, adjustments, variables, sub-models used as input, and resulting output. The third practice is to evaluate how the model interacts with and improves the rating plan. The fourth practice is to enable competition and innovation. Mr. Piazza said states insurance regulators should assist in getting products to the market and ensure the public receives the benefit of models and more sophisticated rating plans.

Mr. Piazza said Appendix B of the white paper identifies information a regulator may want to know to meet the objectives of the best practices. There are 79 informational elements referenced in Appendix B, which a state insurance regulator may find helpful in reviewing a GLM. Mr. Piazza said a regulator may need to access a large amount of information to understand how a model was built and how the model is used. Mr. Piazza said the 79 informational elements are organized in three categories of regulatory interest: 1) selecting model input; 2) building the model; and 3) the filed rating plan.

Mr. Piazza said the white paper addresses the concept of rational explanation, which is a somewhat controversial topic. Mr. Piazza said that a variable may be correlated to loss frequency, but the variable's correlation to loss frequency may not make sense. Because of this, a state insurance regulator may ask the filer to provide a rational explanation of the correlation. Mr. Piazza said confidentiality of models remains a concern for industry. Mr. Piazza said the white paper recognizes confidentiality of models and that confidentiality protections are dependent upon state law.

Mr. Piazza said the last draft of the white paper was circulated in June, and the Casualty Actuarial and Statistical (C) Task Force will review the nine comments submitted on the draft. The Task Force hopes to present the white paper to the Property and Casualty Insurance (C) Committee by the end of September.

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Mr. Ommen said the Big Data (EX) Working Group's focus is on whether state laws and regulations provide the framework to effectively regulate models and data being used. In response to Commissioner Ommen's question about the concept of rational relationship and the Casualty Actuarial and Statistical (C) Task Force's discussion about causation, Mr. Piazza said there were state insurance regulators who thought correlation alone may not be sufficient, and some states use the term "reasonable relationship" in statute. Mr. Piazza said a state insurance regulator may ask about the rational relationship a variable has to the cost of insurance if a correlation does not make sense to a regulator or a consumer would be unlikely to understand the importance of a variable.

Mr. Stolyarov said the white paper encapsulates longstanding practices of regulators and should not be misinterpreted as imposing new requirements for the review of GLMs. Mr. Stolyarov said state insurance regulators have considered the concept of rational relationship for decades since state insurance regulators must understand why a variable has a correlation to risk of loss. Mr. Stolyarov said a correlation may be spurious. Mr. Davis agreed and said actuaries in Alabama ask for an intuitive and plausible connection between predictor variables and the target variable. Mr. Davis said companies should be able to explain connection since there may be a correlation but no plausible explanation.

Commissioner Ommen said the Artificial Intelligence (EX) Working Group is addressing the impact of artificial intelligence (AI) on protected classes. Commissioner Ommen said the work of the Casualty Actuarial and Statistical (C) Task Force is being completed in the context of the current legal framework and addresses how the prohibition of using factors related to race affects the review of current models.

3. Received an Update on the Work of the Accelerated Underwriting (A) Working Group

Director Muriel said the Life Insurance and Annuities (A) Committee appointed the Accelerated Underwriting (A) Working Group at the 2019 Summer National Meeting and is charged to: "Consider the use of external data and data analytics in accelerated life underwriting, including consideration of the ongoing work of the Life Actuarial (A) Task Force on the issue and, if appropriate, drafting guidance for the states." Director Muriel said the Working Group has three phases of work: 1) information gathering; 2) identifying issues and work product; and 3) developing a work product. Director Muriel said the Working Group has met 16 times since October 2019 to receive presentations from actuarial consulting firms, life insurance companies, consumer advocates, law firms and a machine learning assurance company. Director Muriel said the Working Group is forming a liaison subgroup to coordinate activities with other NAIC working groups and a drafting subgroup to begin drafting a white paper. Director Muriel said the Accelerated Underwriting (A) Working Group plans to expose the first draft of the white paper by the end of 2020 and present a final work product to the Life Insurance and Annuities (A) Committee by the 2021 Summer National Meeting.

4. Received an Update on NAIC Technical and Nontechnical Rate Review Trainings

Kris DeFrain (NAIC) said the NAIC offered trainings from November 2019 to June 2020. Ms. DeFrain said state insurance regulators received technical training in exploratory data analysis and statistical techniques insurers are using to develop property /casualty (P/C) risk classifications and rating plans. A consulting actuary presented the theoretical development of statistical techniques and how to apply the theory to real-world datasets using R Programming Language. Ms. DeFrain said the initial sessions focused on exploratory data analysis to familiarize participants with approaches to inspect data irregularities in model data that can undermine the validity of models. The next phase of training was devoted to advanced statistical techniques, including GLMs, generalized additive models (GAMs), gradient boosted trees, random forest ensembles and decision tree models. Ms. DeFrain said the NAIC also offered two non-theoretical webinars, which were classified as nontechnical webinars. The NAIC plans to provide training in October targeted specifically to market conduct examiners. This training is being designed to assist market conduct examiners in identifying priority modeling issues in not only rate models, but also models used in underwriting, claims and marketing.

Ms. DeFrain said the NAIC presented new tools in February for states that contract with the NAIC to receive technical assistance in reviewing P/C rate models. Ms. DeFrain said state insurance regulators will be able to share information through a confidential model database and obtain NAIC technical assistance when reviewing a specific company's model. Ms. DeFrain emphasized the NAIC is providing technical assistance in response to requests from state insurance regulators. Birny Birnbaum (Center for Economic Justice—CEJ) asked for more information about the functionality of the System for Electronic Rate and Form Filing (SERFF) to enhance the review of models and share information among state insurance regulators. Ms. DeFrain

Draft Pending Adoption

said the NAIC has implemented the use of a SharePoint for state insurance regulators to share documents and is providing technical assistance to assist state insurance regulators in identifying whether information is missing in a rate filing. In response to Mr. Birnbaum's question about whether there are written procedures regarding NAIC assistance, Ms. DeFrain said there are currently no written procedures and no direct connection of SharePoint to SERFF. Ms. DeFrain said these are two items still being developed.

Commissioner Ommen said he believes the Speed to Market (EX) Working Group has some responsibility regarding the functionality of SERFF and that SERFF needs to be updated so state insurance regulators are able to access and share information on models. Commissioner Ommen said he agrees written procedures are needed.

Having no further business, the Big Data (EX) Working Group adjourned.

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Draft: 8/19/20

Speed to Market (EX) Working Group
E-Vote
July 31, 2020

The Speed to Market (EX) Working Group of the Innovation and Technology (EX) Task Force conducted an e-vote that concluded July 31, 2020. The following Working Group members participated: Rebecca Nichols, Chair (VA); Maureen Motter, Vice Chair (OH); Wally Thomas (AK); Jerry Workman (AL); William Lacy (AR); Frank Pyle (DE); Dean L. Cameron (ID); Heather Droge (KS); Tammy Lohmann (MN); Mark Rabauliman (MP); Jon Godfread (ND); Frank Cardamone (NH); Russell Toal (NM); Cuc Nguyen (OK); Mark Worman (TX); Tanji Northrup (UT); Lichiou Lee (WA); and Barry Haney (WI).

1. Adopted its July 15 minutes

The Working Group met July 15 (Attachment Two-A) and took the following actions: 1) adopted its June 15 minutes; 2) discussed suggestions for 2020 changes to the Property and Casualty PCM and Uniform Transmittal Document effective Jan. 1, 2021. None of the suggested changes were adopted; and 3) discussed plans for the next call, which will take place Aug. 27, to discuss the SERFF canned report in more detail and other topics related to the Working Group's charges.

2. Adopted its June 30 minutes

The Working Group met June 30 (Attachment Two-B) and took discussed suggestions for 2020 changes to the Life, Accident/Health, Annuity and Credit Uniform Product Coding Matrix (PCM) and Uniform Transmittal Document effective Jan. 1, 2021. Two of the suggested changes were adopted: 1) change the term "implementation date" to "effective date" on the Uniform Transmittal Document within the System for Electronic Rate and Form Filing (SERFF) system general information area on the disposition letter; and 2) add a sub-type of insurance (TOI) for expatriate plans under H15G and H15I. The description would be expatriate plans that are not required to comply with all state or federal mandates for health benefits.

Having no further business, the Speed to Market (EX) Working Group adjourned.

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Draft: 7/27/20

Speed to Market (EX) Working Group
Conference Call
July 15, 2020

The Speed to Market (EX) Working Group of the Innovation and Technology (EX) Task Force met via conference call July 15, 2020. The following Working Group members participated: Rebecca Nichols, Chair (VA); Maureen Motter, Vice Chair (OH); Wally Thomas (AK); Jerry Workman (AL); William Lacy (AR); Shirley Taylor represented by Donna Archuleta (CO); Heather Droge (KS); Tammy Lohmann (MN); Camille Anderson-Weddle and LeAnn Cox (MO); Ted Hamby represented by Timothy Johnson (NC); Chrystal Bartuska (ND); Frank Cardamone (NH); Russell Toal represented by Leatrice Geckler (NM); Cuc Nguyen (OK); Mark Worman and Sharalyn Taylor-Hargrove (TX); Tanji Northrup (UT); Gail Jones and Lichiou Lee (WA); and Barry Haney (WI).

1. Adopted its June 15 minutes

The Working Group met June 15 and took the following action: 1) received an update on the SERFF Advisory Board and System for Electronic Rate and Form Filing (SERFF) metrics; 2) received an update from the Interstate Insurance Product Regulation Commission (Compact); 3) adopted the suggestion to create a SERFF canned report for rate changes; and 4) discussed SERFF state reports.

Ms. Droge made a motion, seconded by Mr. Thomas, to adopt the Working Group's June 15 minutes (Attachment Two-A1). The motion passed unanimously.

2. Reviewed Suggestions and Made Changes to the Property and Casualty Uniform PCM and Uniform Transmittal Document effective Jan. 1, 2021

- a. The first suggestion discussed was to either change the "effective date of last rate revision" located on page four of the paper document and the rate/rule schedule of SERFF to the "renewal effective date of last rate revision" or add a field and capture both new and renewal effective dates for last rate revision. The other suggestion that aligned with this and was discussed simultaneously was to add a field to the rate/rule schedule showing the SERFF tracking number for the last rate revision. The reason for these suggestions is that they would be helpful since the state suggesting it limits rate changes during a renewal cycle. Ms. Motter noted that every state looks at these fields a little differently. She asked if it would be helpful to add instructions to the state general instructions and/or use the objection process with quick text to request that these fields be updated with a post submission update. Quick text could also be used at disposition to explain which type of date is being approved.

Ms. Lohmann believed adding a field to the rate/rule schedule showing the SERFF tracking number for the last rate revision would be useful. Ms. Geckler believed both suggestions would be helpful. Ms. Archuleta noted that Colorado's preference is to leave this section as it is and make no changes.

Ms. Motter asked if changing the name of what is currently there would cause data integrity issues for filings previously submitted. Brandy Woltkamp (NAIC) noted that the previously submitted data may not reflect the new labeling if labels were changed. Ms. Motter asked if adding two new fields would be best. Ms. Woltkamp noted that this would be the best option for data integrity purposes. Ms. Droge noted that Kansas would not need these fields, but it is not opposed to adding them. Ms. Archuleta noted that Colorado also does not need these fields. Ms. Nguyen and Mr. Cardamone noted that quick text would be the best solution for the states that want these fields.

Ms. Droge made a motion, seconded by Ms. Nguyen, to not adopt the suggestions to change the effective date of last rate revision or add a field to the rate/rule schedule showing the SERFF tracking number for the last rate revisions at this time. The motion passed unanimously.

- b. The next suggestion discussed was regarding type of insurance (TOI) number 28. The suggestion was to update the instructions on force-placed business to force-placed or lender-placed business. It stated that this differs from the NAIC Annual Statement where force-placed business is filed on the same pre-defined lines of business as business placed by borrower or creditor for the same coverage. The reason provided for this suggestion is that this language would further clarify where the product should be reported on the annual statements.

Ms. Motter noted that there is already a footnote in the product coding matrix (PCM) that explains to report the business in the annual statement line. There is an asterisk placed next to TOI number 28 to draw attention to this explanation, which is located on the final page of the PCM. The existing note indicates that there is a difference between the PCM TOI and the annual statement reporting and to report the business in the appropriate annual statement line.

Mr. Thomas made a motion, seconded by Ms. Lohmann, not to further update the instructions on force-placed business under TOI number 28. The motion passed unanimously.

- c. The next suggestion discussed was to add a TOI for Certificates of Insurance with the following Sub-TOIs: Personal/Commercial Certificate of Insurance Filings, Personal Certificate of Insurance Filings, and Commercial Certificate of Insurance Filings with the description, "Certificates are used to show proof that an organization or person has insurance coverage." Ms. Motter noted that it may be appropriate to submit this under TOI number 33.0 (Other Lines of Business) or under the individual line of business these belong under. For example, if there was a filing submission for Commercial General Liability that would include the certificate of insurance used, it would be part of the filing submission and not be separated out. In this case, it would have the same TOI and be in the same filing submission as the remainder of the product.

Ms. Jones noted that Washington's analysts are not in favor of implementing this suggestion. The analysts did not believe a certificate is a TOI, but it is more of a policy type; TOIs are supposed to be about the coverage involved. The analysts believe a new filing type is more appropriate than a new TOI. Ms. Droge noted that Kansas does not need this additional TOI. Mr. Worman noted that in Texas, these are filed separately, and they have their own statute and their own separate filing requirements. Ms. Bartuska noted that North Dakota also has a separate statute that dictates the certificates, and it uses filing labels for this. She noted that typically they come in with a larger policy, and she agrees that this is not needed, as it is more of a specific administrative form used by industry and agents and not a policy itself. Mr. Lacy noted that he is not in favor of creating a new TOI just for a certificate that already applies to an existing product and would require the filer to file under the appropriate TOI. Ms. Nguyen agreed.

Ms. Nguyen made a motion, seconded by Ms. Bartuska, to not add a new TOI for Certificates of Insurance. The motion passed unanimously.

- d. The next suggestion discussed was to separate the TOIs for commercial umbrella and excess to the following: excess liability, umbrella liability, excess umbrella, and combination umbrella and excess. The reason provided for this suggestion is that some states consider these excess lines as separate lines of insurance. Ms. Motter noted that Ohio does not have different requirements for these lines. Ms. Jones noted that Washington's staff is not in favor of making these changes, as the current TOI is working fine for Washington. She also expressed concern with how the data integrity of past filings would be affected if the current TOI were separated out.

Theresa Boyce (ACE Group) noted that she is only aware of two states where this information must be broken out, and it has not been a problem to use the current TOI in most states. Ms. Motter noted that states that need this information broken out can use filing labels.

Mr. Cardamone made a motion, seconded by Ms. Droge, to not separate out the TOIs for commercial umbrella and excess. The motion passed unanimously.

- e. The last suggestion discussed was to add a field for advisory affiliations to the general information tab for specific TOIs/sub-TOI combinations. The reason for this suggestion is that they would like to create a method for the company to indicate, for state exceptions and compliance related issues, whether they are affiliated with and use an advisory affiliation such as Insurance Services Office (ISO), Association Insurance Services Inc. (AIS), The Mutual Service Office Inc. (MSO), Association for Cooperative Operations Research and Development (ACORD), ODEN Insurance Services Inc., Administrative Services Organization (ASO), etc.

Ms. Motter noted that state specific fields can be utilized for this request. Ms. Boyce noted that this request could be confusing because the reference number field for the advisory organization is not filled out unless they are adopting an ISO filing. She explained that it would need to be clarified if placed on the general information screen for a good understanding of exactly what has been requested. Ms. Jones agreed with this because if reference organization, reference number and reference title are already there, and then a new entity is added, it would need to be more descriptive; consequently, since a state specific field is utilized, everyone that fills out the filing would have to answer that question. She noted that she is concerned that the reference organization and advisory organization could get placed in the wrong field for the filing due to confusion on this request. Ms. Motter explained that this suggestion appears to ask for various compliance related exception information for various things, such as cancellations notice forms, fraud language, etc., all in one field, which could be difficult to interpret.

Mr. Cardamone made a motion, seconded by Ms. Droge, to not add a field for advisory affiliations to the general information tab for specific TOIs/sub-TOIs. The motion passed unanimously.

3. Discussed Other Matters

Ms. Nichols noted that another call will be scheduled at the end of August to discuss the SERFF canned report and a couple of other topics related to the Working Group's charges.

Having no further business, the Speed to Market (EX) Working Group adjourned.

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Draft: 7/7/20

Speed to Market (EX) Working Group
Conference Call
June 15, 2020

The Speed to Market (EX) Working Group of the Innovation and Technology (EX) Task Force met via conference call June 15, 2020. The following Working Group members participated: Rebecca Nichols, Chair (VA); Maureen Motter, Vice Chair (OH); Joanne Bennett and Wally Thomas (AK); Jerry Workman (AL); William Lacy (AR); Shirley Taylor (CO); Frank Pyle (DE); Heather Droge (KS); Tammy Lohmann (MN); LeAnn Cox (MO); Ted Hamby (NC); Chrystal Bartuska (ND); Frank Cardamone (NH); Russell Toal (NM); Cuc Nguyen (OK); Sharalyn Taylor and Mark Worman (TX); Tanji Northrup (UT); Lichiou Lee (WA); and Barry Haney (WI). Also participating was: Maria Ailor (AZ); and George Bradner (CT).

1. Received an Update on the SERFF Advisory Board and SERFF Metrics

Joy E. Morrison (NAIC) noted that the System for Electronic Rate and Form Filing (SERFF) Advisory Board did not meet at the Spring National Meeting, but it will meet at the Summer National Meeting. She noted the new board members that joined in March. She stated that the SERFF data hosting project is complete, and it included some additional work to the state data retention feature, which is also complete. Both projects were finished under the projected budget. The other project discussed was a SERFF billing enhancement. Previously, industry customers were buying a block of filing transactions in advance. The blocks are being removed, and now states will be charged on transactions when the transactions occur. In the same way that they would put their state fees on a filing, the transactions fee will be added to the filing, and when the customer hits submit, a transaction fee will be initiated at the same time. It is a four-piece project: 1) a self-service interface for the centralized e-commerce initiative; 2) a credit card payment method being added for infrequent filers; 3) removal of the filing block; and 4) a separate project for the SERFF filing review. A fee will be put in place to offset the cost of the vendor payments. There will be an analysis fee on filings that are submitted to Texas with an attachment on the forms schedule, which will help offset the cost of licensing for the vendor product that is being used for that pilot. That piece of work will be done as part of the billing project, and it is being reported separately in a separate fiscal project report.

The last project wrapping up is the SERFF Assessment. This involved bringing in an outside group to review SERFF and figure out what needs to happen for SERFF to meet existing and future needs of the stakeholders. About 100 stakeholder interviews took place as part of this process. A survey was also distributed to collect information from additional stakeholders. A final draft of the report was completed in May. Phases of the billing project will be put in to place this summer and fall. The SERFF Assessment project will be distributed to some of the members in July, and a fiscal request will probably be sent in the fall.

Birny Birnbaum (Center for Economic Justice—CEJ) noted that at each SERFF Advisory Board meeting for the last four to five years, the issue of SERFF filing access functionality was discussed. Many states use the SERFF filing access to provide the public access to rate and form filings. The public has access only to the public information, so if a filing has some sort of confidential information that a company marks trade secret for example, then those documents are not included in the public document that a member of the public can access. There is no disclosure when you go to SERFF filing access that any document has been withheld or the reason it has been withheld. This can be problematic as it may conflict with state laws, as the state may not refuse to provide a member of the public a document unless they disclose what document has been withheld and the reason for withholding that document. The CEJ has been asking for several years to include this SERFF filing access functionality to identify what documents are being withheld from public disclosure and the reason. The CEJ believes that some states may be out of compliance with their public information laws by not having SERFF provide that additional functionality.

Theresa Boyce (Chubb) noted that if you prepay the SERFF filing block now, the fee is a lot less than if you do not. She asked whether there would be an adjustment to the fee when the change is made to remove prepayments for filing blocks. Ms. Morrison noted that they do not intend to change the pricing based on whether it is or is not a block. They are trying to put everyone in the same rate group that they are currently in. Ms. Morrison noted that this is not being done to generate revenue, but to simplify things for both industry users and NAIC staff who manage the filing blocks. Ms. Boyce explained that her understanding then is that if a company typically buys a block then they will not have to prepay going forward to get the lower fee, they will just be charged the lower fee. Ms. Morrison noted that they would stay in that category through 2021. The block expiration is March 2022. In late 2021, pricing is expected to be based on usage. Most people should fall into the same bucket because a block is bought that is used within two years, and that is what is keeping a company in that rate band. Ms. Morrison noted that very little fluctuation is expected. Ms. Boyce asked how they would be billed. Ms. Morrison noted that they will not

be billed because the transaction fee will be taken by Automated Clearing House (ACH) debit, the same way the state fee is paid. She noted that additional details on this matter will be provided in early July.

2. Received an Update on SERFF Metrics

Ms. Morrison noted that the SERFF team generally looks at transaction volume, and it tries to determine if there are any kind of trends or changes that may occur in a state and how it handles a particular line of business that would affect the transaction volumes that come through the system. This helps the SERFF team predict and provide performance and support as well as a tracking revenue budget. The submissions are static from year to year. Generally, there are 550,000 to 565,000 transactions, not filings. If you are in a state where filings can be submitted on behalf of multiple companies, each company is counted as a transaction. If one filing is submitted on behalf of four companies, that is four transactions. This is what SERFF metrics are based on and what is used to generate the Speed to Market Assessment report that is provided to the individual states and the Commissioners at Roundtable in the national meetings. Mr. Bradner noted that from a reporting and workload standpoint, Connecticut only looks at the example provided as one transaction. The SERFF report he gets from his examiners shows four transactions, when they only reviewed one transaction. Mr. Bradner believes that this is a reporting metric that needs to be looked at because a company could be filing the product in four companies, but the examiner only reviews that one filing. He believes it should not be tracked in SERFF as a metric in workload management as four transactions, and it should just be one. He asked if there is a way that the states can change that to reflect how they measure workload. Ms. Morrison noted that she did not think the report could be modified in that way. Brandy Woltkamp (NAIC) noted that the way the reports are currently, they are based on transactions solely, which came from the direction of the Working Group. Ms. Morrison noted that this could be changed at the direction of the Working Group, and this was decided when metrics were reviewed. Mr. Bradner noted that it could be discussed in the future. Mr. Worman noted that Texas was having this issue as well, and someone on the SERFF team helped them come up with a way to address this concern so that the workload management is more reflective of what the reviewers are looking at. Mr. Lacy noted that the data they receive from SERFF can be used in many ways, and he discussed how they review the data in Arkansas. Ms. Morrison noted that they are looking at ways to make the data provided from SERFF easier to understand as part of the assessment.

3. Received an Update from the Compact

Karen Schutter (NAIC) noted that the *Insurance Compact Compass*, a three-year strategic plan with three priorities, nine objectives, and 28 action items, has been adopted. There is a webpage devoted to the strategic planning initiative. The link can be located on the Interstate Insurance Product Regulation Commission's (Compact's) website, insurancecompact.org. There are various tools available, including a dashboard, tracker and navigator. The navigator breaks down the action items by steps and timeframe. The timeframes will be reviewed due to the COVID-19 situation.

Last fall, the Compact's Product Standards Committee (PSC) recommended amendments to two individual life uniform standard benefit features that had been in place for 10 years: a waiver of premium and a waiver of monthly deductions. The Committee is also working on a recommended new standard for a waiver of surrender charges for life products. These amendments and the uniform standard add qualifying benefit triggers. They are not long-term care (LTC); they just trigger upon the insured having a qualifying event. These amendments were done at the direction of the Management Committee. A gap analysis was completed in 2018, and this was on the list. The PSC met for the first time this year in mid-May, and it is working on these amendments and the new standard. The Committee is also working on the first action item under the strategic plan, which is providing wider and easier to follow notices and steps with respect to the development of uniform standards. The Committee will be looking for feedback from the states and consumer and industry representatives.

The Rulemaking Committee is actively working on its strategic plan action items, including whether to expand the group standards that are in place for term life, annuities and disability income to include more group types than just the employer groups. It is also working on a survey for companies and state insurance regulators to gather comprehensive information on how group types are filed, reviewed, approved, used and marketed. In addition, the Committee is reviewing notices to state insurance regulators and legislators regarding notice and their rights in terms of adoption and opting out of uniform standards. Work plans for the PSC rulemaking and published call summaries are available on the About page of the Compact website.

Committee drafting calls are now open to all state insurance regulators starting this year. The members of the Committee are still the only ones who will vote on any recommendations before they go up to the Compact. Upcoming calls will take place this summer.

The Compact has developed a COVID-19 resource page, which answers frequently asked questions (FAQ) about what type of questions a company can ask on an application with respect to COVID-19. The uniform standards regarding application questions are carefully drafted, and they must be in a certain format and require that any question be related to receiving a diagnosis from a member of the medical profession. State insurance regulators looking for guidance should review the resource page, and they are encouraged to reach out to the Compact office.

A website survey was previously conducted, and focus groups for state insurance regulator, industry, and consumer state legislators are being created. Each group will provide feedback on its perspective for enhancing the website, then a public call will take place to bring all the groups together to review the recommendations.

The Colorado Supreme Court has issued an opinion in a third-party litigation case. It was not the deciding court, but its opinion does affect Colorado and the Compact. It said that the uniform standards operate more as regulation, and a regulation cannot override a conflicting state statute. The membership has been looking at that, and they are working to put together a comparison, a state statute, and provisions of uniform standards. The initial feedback is that there are not a lot of situations where the uniform standards would differ from a state statute. The conflict in the Colorado case is that a two-year suicide clause was followed, and Colorado is one of three states that follow a one-year clause. There is a governance review committee that was created this year. It is looking at this case and kicking off two major projects for the Compact. One is a governance review to ensuring that best practices are being followed and benchmarking against comparable organizations. The other is a business assessment to look at the organization and ensure that it is sustainable over the next five to 10 years. Both projects came out of the strategic planning process. The selection process is currently taking place and responses came in earlier this month. The Governance Review Committee is reviewing those, and it will make selections and recommendations at the Summer National Meeting for the Compact to review and discuss.

4. Discussed the Suggestion to Create a SERFF Canned Report for Rate Changes

Brandy Woltkamp (NAIC) noted that the suggestion to create a SERFF Canned Report for rate changes came from the yearly request for Speed to Market suggestions that is sent out annually. The reason for this suggestion is that rate changes are important to every state insurance regulator, and allowing the state insurance regulators an easy way to see what was requested and in turn what was approved in one report would help the reviewers and state consumer help lines in reporting differences of rate information.

Mr. Bradner asked if this is for all lines of business or just specific lines of business and if it would include block cost filings. Ms. Ailor noted that this request is from one state, but that if there is a lot of interest in this suggestion, then the details regarding lines of business and types of insurance (TOIs) would need to be discussed further. Mr. Bradner noted that Connecticut is interested in this report, as he does a report each year for multiple lines of business regarding how many rate filings they received and what the overall rate the company was taking. For Auto and Homeowners, he reviews what the overall statewide impact of that change is and looks at commercial lines of business as well. Ms. Droge is also interested, and she noted that Kansas does a similar report. Mr. Toal, Ms. Taylor, Ms. Nguyen, Mr. Haney and Mr. Lacy also expressed interest in this report.

Ms. Taylor asked if this would encompass anything within a date parameter provided so it can provide several different filings in the same report. Ms. Motter said that is correct. She noted that it would be helpful if the states that currently create a report like this on their own or people that have an idea of what they would want out of this report can provide feedback and requests to the Working Group about what fields would be helpful. She asked that the feedback and requests be sent to Ms. Woltkamp.

Ms. Lee made a motion, seconded by Mr. Toal, to create a SERFF Canned Report for rate changes. The motion passed unanimously.

Lisa Brown (American Property Casualty Insurance Association—APCIA) asked if this information can be pulled from existing filings in SERFF, and she wanted to clarify that this is not a discussion about companies having to provide additional information. Mr. Bradner noted that this report would not be seeking additional information. It would look at what a company filed and then what was ultimately approved by the state. Ms. Nichols asked that any thoughts on this be sent to Ms. Woltkamp or Leana Massey (NAIC) so that information can be compiled and discussed in greater detail on a future call.

5. Discussed SERFF State Reports

Ms. Motter noted that a year or two ago, a meeting took place that centered around the Canned Reports, and feedback was sought as to which SERFF State Reports state insurance regulators were using. It was apparent in the meeting that people were not using the Canned Reports, and a lot of the reason was that it was not intuitive and people were unclear as to what data was being provided or not provided and what the fields represented. An attachment that outlines the existing Canned Reports and what fields are captured both in criteria selection and display was sent out with the agenda, and it is also posted to the Speed to Market webpage. Ms. Motter asked that everyone review the SERFF State Reports document to get a good understanding of the information currently provided and what the reports can capture and produce. Any suggested revisions or additions to the report going forward will be discussed in more detail on a future call.

Having no further business, the Speed to Market (EX) Working Group adjourned.

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Draft: 7/15/20

Speed to Market (EX) Working Group
Conference Call
June 30, 2020

The Speed to Market (EX) Working Group of the Innovation and Technology (EX) Task Force met via conference call June 30, 2020. The following Working Group members participated: Rebecca Nichols, Chair (VA); Maureen Motter, Vice Chair (OH); Joanne Bennett and Wally Thomas (AK); Yada Horace for Jerry Workman (AL); William Lacy (AR); Shirley Taylor (CO); Dean L. Cameron (ID); Heather Droge (KS); Tammy Lohmann (MN); Camille Anderson-Weddle (MO); Chrystal Bartuska (ND); Russell Toal (NM); Cuc Nguyen (OK); Sharalyn Taylor (TX); Tanji Northrup (UT); Gail Jones and Lichiou Lee (WA); and Barry Haney (WI). Also participating was: Bob Grissom (VA).

1. Reviewed Suggestions and Made Changes to the Life, Accident/Health, Annuity and Credit Uniform PCM and Uniform Transmittal Document effective Jan. 1, 2021

- a. The first suggestion discussed was to change the term “implementation date” to “effective date” on the filing and disposition letter, which is part of the transmittal document. For the paper filings, this would affect the transmittal document; and if the change is agreed upon, it would affect the System for Electronic Rate and Form Filing (SERFF), and changes would be made in SERFF as well. Reasons for this suggestion were discussed.

Ms. Motter noted that a possible solution is to change the label to “effective/implementation date” with state instructions upon request to indicate how the state is viewing the date. Quick Text for the disposition could also be utilized to indicate what the date means. Ms. Jones noted that she believes using “effective date” is a better idea than using “effective/implementation date” because it stays consistent with the property and casualty line. She asked what would happen to filings that have the old implementation date if this change is made. Ms. Motter noted that it would not change the data previously stored. Ms. Taylor agreed with changing the wording as suggested, as did Superintendent Toal.

Mr. Thomas made a motion, seconded by Ms. Lee, to change the term from “implementation date” to “effective date” on the Uniform Transmittal Document within the SERFF system general information area and on the disposition letter. The motion passed unanimously.

- b. The next suggestion discussed was to create an additional sub-type of insurance (TOI) for expatriate plans within the H15 TOI. Expatriate plans are exempt for the federal Affordable Care Act (ACA), and the recommendation is that they have a separate sub-TOI for identification and ease of locating. The recommendation is that the code be similar to the one created for short-term limited-duration (STLD) plans.

Ms. Motter noted that something to consider is whether a TOI would need to be created for H15G, which is for health group, and H15I, which is for health individual. Ms. Jones noted that Washington’s actuarial staff has stated that expatriate coverage is only applicable to groups, and it supports adding a TOI for H15G. Ms. Motter noted that this would add H15G.005 for expatriate plans if this change is implemented. Mr. Thomas noted that Alaska’s analysis indicates that it would need this for individual sub-TOIs. Ms. Motter noted that this could be accommodated in a similar manner as stated previously. Ms. Jones noted that Alaska has filings coming in for expatriate plans, so it would use these suggested sub-TOIs.

Mr. Thomas made a motion, seconded by Superintendent Toal, to add a sub-TOI for expatriate plans under H15G and H15I. The description would be expatriate plans that are not required to comply with all state or federal mandates for health benefits. The motion passed unanimously.

- c. The next suggestion was to either create a new TOI of A09I for Individual Annuities Registered Index-Linked with three sub-TOIs of A09I.001 for Interim Value based on fair value, A09I.002 for Interim Value based on proxy value, and A09I.003 for Interim Value based on other approach, or to create a new sub-TOI of A07I.004 for Registered Index-Linked. The reason for this suggestion was discussed.

Ms. Motter noted that things to consider are whether this would be applicable to group and individual, and whether an alternate solution could be the addition of one or two new TOIs of A07I and/or A07G and using filing labels for additional product granularity since state insurance regulators can search on filing labels. Ms. Jones noted that she prefers the alternate suggestion of adding a sub-TOI, but she stated that Washington would not be using these new TOIs. Superintendent Toal noted that New Mexico has not received these types of filings. Ms. Taylor noted that Colorado does not require any Life annuity rate or form filings, so it would not use these codes. Ms. Bartuska noted that North Dakota would also not use these new TOIs.

Ms. Nguyen made a motion, seconded by Ms. Bennett, to table this recommendation for future discussion and use other tools if needed for identifying these types of filings due. The motion passed unanimously.

- d. The next suggestion discussed was to include a sub-TOI for “Group Medicare Part D Supplement” under H17G, Group Health – Prescription Drug. This would be used for plans sold to retiree groups to supplement the benefits provided by Medicare Part D. The reason for this suggestion is that Medicare Part D supplemental filings are not received often, but they have unique characteristics and requirements. It would be helpful to be able to identify these filings separately from other filings.

Ms. Taylor and Ms. Jones noted that it would be helpful to have a sub-TOI for this. Ms. Lee noted that Washington prefers having a separate TOI and sub-TOI under H17G for non-Medicare Part D supplemental or any other prescription. Ms. Motter asked if the filing labels would be a solution since most states are not in need of this change. Ms. Jones confirmed that they could use the labels. Ms. Taylor noted that she believes the filing labels would work for them as well. Ms. Nguyen noted that Oklahoma uses the filing labels a lot and find them very helpful.

Ms. Nguyen made a motion, seconded by Ms. Bennett, to not create a new sub-TOI under H17G, but rather utilize the filing labels capability feature in SERFF in order to identify Group Medicare Part D Supplemental Filings. The motion passed unanimously.

- e. The next suggestion was to include a new TOI and sub-TOI for “Group Retiree Health” to be used for plans designed to provide health insurance coverage to retirees of an employer. The reason for this suggestion was discussed. Ms. Lee noted that based on the current filing requirements for Washington, it is concerned that this change would confuse carriers, and it would prefer using filing labels for this.

Superintendent Toal made a motion, seconded by Ms. Bartuska, to not create a new TOI and sub-TOI, but rather utilize the filing label feature in SERFF to identify filing submissions for Group Retiree Health.

- f. The next suggestion was to include a new TOI for combined dental and vision products with a sub-TOI for dental/vision with hearing benefits and a sub-TOI for dental/vision without hearing benefits. The reason for this suggestion was discussed. Ms. Lee noted that in Washington, these suggested TOIs could not be used due to its statutes for these coverages. The Working Group did not have an interest in making this suggested change.

Ms. Bennett made a motion, seconded by Superintendent Toal, to not create a new TOI for combined dental and vision products with sub-TOIs of dental/vision with and without hearing benefits, but rather continue utilizing the existing TOIs for these types of products, including filing labels and/or additional benefits fields where needed. The motion passed unanimously.

- g. The next suggestion was to include a new TOI for “H# Multi-line – Other” to be used for forms with multiple products that are all health coverages. The reason for this suggestion was discussed. Ms. Motter asked if the TOI of H21 for Health Other could be used for these types of filings. Ms. Jones, Ms. Bartuska and Superintendent Toal thought that would be appropriate. Ms. Taylor noted that in Colorado, the carriers are required to complete separate filings for each type of product. The Working Group did not have an interest in making this suggested change.

Superintendent Toal made a motion, seconded by Ms. Taylor, to not make a change to the Product Coding Matrix (PCM) for a new TOI of “H# Multi-line – Other,” but rather recommend using H21 for Health Other for these types of filings. The motion passed unanimously.

Ms. Taylor noted that Colorado has seen carriers submitting 10 different types of products on an application; one included Life. She asked if any other states allow Life forms and rates to be included with other types of health coverages on the application. Superintendent Toal and Ms. Bartuska noted that New Mexico and North Dakota are not allowing that. Ms. Taylor confirmed that Colorado is making them take it off, as they are different products, and she wanted to confirm that other states were handling that in a similar manner.

- h. The final suggestion discussed was adding sub-categories for reports in certain areas. The TOI with the most pressing concern is Long-Term Care (LTC). The suggestion also included a request for reports related to Medicare Supplements, Life Illustrations, Group Credit and Network Adequacy. The reason for this suggestion was discussed. Ms. Motter noted that many states are using a filing type of “Reports” for this item and filing labels for more granularity. Ms. Jones noted that using the filing type of “Reports” and connecting it to the sub-TOI the carrier deems fitting is appropriate. Ms. Taylor noted that Colorado uses annual certification on all of its reports. Colorado has created and uses state specific codes that specify each one of the LTC reports and Medicare Supplement reports. The Working Group did not have an interest in making this suggested change.

Ms. Taylor made motion, seconded by Ms. Anderson-Weddle, to not create additional sub-TOIs, but rather utilize filing types or state TOIs to assist in the acceptance of filing submissions for LTC, Medicare Supplements, Life Illustrations, Group Credit, and Network Adequacy. The motion passed unanimously.

Having no further business, the Speed to Market (EX) Working Group adjourned.

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Draft: 8/17/20

Artificial Intelligence (EX) Working Group
Conference Call
June 30, 2020

The Artificial Intelligence (EX) Working Group of the Innovation and Technology (EX) Task Force met via conference call June 30, 2020. The following Working Group members participated: Jon Godfread, Chair, Chris Aufenthie, Chrystal Bartuska and John Arnold (ND); Mark Afable, Vice Chair, Timothy Cornelius, Jody Ullman, Mark Prodoehl, Nathan Houdek, Barbara Belling, and Mary Kay Rodriguez (WI); Jerry Workman and Gina Hunt (AL); Erin Klug, Vanessa Darrah and Tom Zuppan (AZ); Lucy Jabourian and Pam O'Connell (CA); Michael Conway, Jason Lapham and Peg Brown (CO); Andrew N. Mais and George Bradner (CT); David Altmaier, Rebecca Smid, and Nicole Altieri Crockett (FL); Doug Ommen and Travis Grassel (IA); Bruce Sartain, Jeff Varga, CJ Metcalf and Vincent Tsang (IL); Amy Beard and Karl Knable (IN); Rich Piazza and Tom Travis (LA); Kathleen A. Birrane, Ron Coleman and Robert Baron (MD); Grace Arnold, Tammy Lohmann and Phil Vigliaturo (MN); Chlora Lindley-Myers and Cynthia Amann (MO); Kathy Shortt (NC); Christian Citarella (NH); Barbara D. Richardson (NV); Ron Kreiter (OK); Jessica K. Altman, Michael McKenney and Shannen Logue (PA); Alison May and Rachel Jade-Rice (TN); and Christina Rouleau (VT). Also participating were: Dean L. Cameron and Jo McGill (ID); Brenda Johnson and Tate Flott (KS); Robert Wake and Sandra Darby (ME); Troy Smith (MT); Randall Currier (NJ); Mark McLeod (NY); Elizabeth Kelleher Dwyer (RI); Raymond G. Farmer and Michael Wise (SC); Mike Boerner (TX); and David Hippen (WA).

1. Adopted its June 3 Minutes

The Working Group met June 3 and took the following action: 1) adopted its May 5 minutes; 2) continued reviewing the draft Principles on Artificial Intelligence (Principles); and 3) reviewed a proposed timeline for adoption of the AI Principles.

Commissioner Ommen made a motion, seconded by Commissioner Afable, to adopt the Working Group's June 3 minutes (Attachment Three-C). The motion passed unanimously.

2. Reviewed Draft AI Principles Version 5

Commissioner Godfread reviewed the process for adopting the Principles once they have been adopted by the Working Group. He said the changes in Version 5 of the AI Principles, posted to the Working Group's webpage since June 15, should reflect the discussion on the Working Group's June 3 conference call. He reviewed those changes.

3. Discussed Comments Related to Introductory Language, Legal Liability and Proxy Discrimination

Commissioner Godfread said the North Dakota Department of Insurance (DOI) offered some introductory language for discussion based on comments from interested parties. He said that was discussed during the June 3 conference call, and Angela Gleason (American Property Casualty Insurance Association—APCIA) indicated that she would work with the North Dakota language and offer suggested language based on it for discussion on this call. Ms. Gleason said it is important that the language sets out the scope and parameters for the document to ensure that everyone is comfortable with the direction. She said the goal is to get companies to think about and implement the Principles, guide the committee structure, and ensure consistency in terms of interpretation. She then reviewed the APCIA proposed changes (Attachment Three-A). She said it is important for the Principles to be risk-focused; keep in mind this is an evolving issue and the goal is to promote innovation in ways that benefit consumers.

Commissioner Godfread said the APCIA recommended changes get us to a point where we are speaking consistently regarding what the Principles are intended to be; i.e., an internal, aspirational, guiding document for the NAIC. He said the language offered by the APCIA clarifies and adds weight to that purpose.

Ms. Jabourian asked why the word "aspire" is included. She said the entire document is aspirational. She said the word weakens the overall concept. Ms. Gleason said these are high level guiding principles, and that is why the word "aspire" was included. Ms. Jabourian said if the word was removed, it would not change that intent. Ms. Gleason said removing it would be agreeable if the rest of the language remains. Mr. McKenney said he would support removing the word "aspire" as well because the previous version recommends that AI actors "adhere" to the AI Principles, and changing that to the word "aspire" does seem to weaken the intent.

William D. Latza (Lemonade) asked if the word “aspire” is anywhere else in the Principles and whether anything else characterizes the Principles as aspirational if the word “aspire” is removed from the introductory language. Commissioner Godfread said he does not believe so but adding the word “aspire” does not change that this is aspirational; therefore, it is not necessary. Ms. Jabourian added that these are high level guiding principles, and they do not carry the weight of law or any legal liability. She said including the word “aspire” is simply not needed, and if included, it weakens the intent. Ms. Gleason asked if the minutes could reflect that the intent of the document is to be “aspirational.” Commissioner Godfread said yes, the minutes can reflect that point.

Birny Birnbaum (Center for Economic Justice—CEJ) said the CEJ submitted a comment that directly addresses this issue. He said the CEJ has some concerns with the APCIA language specific to so many references to compliance with legal requirements. He said it is the CEJ’s view that people do not need to be reminded that they must comply with the law. He said it is not an “aspirational” thing to comply with the law; this is an emerging area, and current legal requirements do not address everything. He said the CEJ suggested the addition of language that calls on AI actors to not simply seek to comply with legal requirements but to act according to the AI Principles in the absence of specific legal requirements and go beyond mere compliance when such actions would better meet the Principles. He said this gets to the aspirational part and drives home the point that the whole area of AI is uncharted ground for a lot of regulatory insurer actions. He said the CEJ has a real concern with the “level of regulatory oversight” language proposed by the APCIA, stating that the level of regulatory oversight will vary based on the risk and impact to the consumer. He said the Principles should be interpreted and applied in a manner that accommodates the nature and pace of change in the use of AI by the insurance industry and promotes innovation, while protecting the consumer from harm. He said this language introduces a lot of new terms that would be open to interpretation and could lead to stakeholders interpreting them to mean whatever they want, and the language does not really add anything useful.

Commissioner Mais said he agrees with deleting the word “aspire,” but regarding the “level of regulatory oversight” language, that just brings out the idea of proportionality that is fundamental to regulation. Commissioner Godfread said he agrees, noting that the entirety of this process is an attempt to get to balance in what is uncharted areas, while acknowledging and avoiding inherent risks. He said he believes this language does that and sets the right tone for other committees that will continue to have discussions about the level of regulatory oversight in the area of AI going forward.

Mr. Citarella said the word “will” in that sentence might be changed to “should” or “ought” to be more suggestive and not tie the hands of the state insurance regulator. Commissioner Mais suggested changing the word to “may.” Commissioner Afable and Commissioner Birrane agreed that it is a good change. Commissioner Ommen agreed that the document is intended to be guiding principles, and it does not have to be specific in all areas. He said he agrees with what is proposed.

Commissioner Godfread said the word “aspire” would be removed and the word “will” would be changed to “may” in the sentence about the level of regulatory oversight being based on the risk and impact to the consumer. Commissioner Richardson made a motion, seconded by Commissioner Altman, to adopt the APCIA language with the two suggested changes. The motion passed unanimously.

Commissioner Godfread asked the Working Group to turn its attention to the language under the Fair and Ethical section that says “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.” He said on a recent member call, this language was discussed and had overwhelming support. He said the risk of embedded bias in the use and creation of an algorithm is a recognized issue, and the members are committed to not allowing it. He said this has been front of mind since the creation of this Working Group, and this language is not only warranted but necessary at this point. He said a work product that does not address proxy discrimination would leave a gaping hole in terms of our intentions. Commissioner Godfread said we must aspire to do better and acknowledge the risks that come with new technology. He asked Mr. Aufenthie to talk about the North Dakota DOI’s suggested language. Mr. Aufenthie said a minor edit for clarification was offered. He said it was not the intent to make it confusing or equate the use of proxy variables with proxy discrimination, but quite the opposite. He said the feedback on the Version 5 language was that it could be interpreted to mean that proxy variables would never be allowed, but the proposed language is intended to say they would not be allowed to be used to unfairly or unlawfully discriminate against protected classes. He added that AI actors should proactively avoid AI systems that use variables or bad data that would make discrimination somehow legal, but at the same time, use of proxy variables would be allowed if there is a legitimate and acceptable business purpose.

Commissioner Ommen said he continues to have concerns about phrases such as “proxy variables” that are not well understood. He said discrimination in terms of education and employment is not unfair discrimination in the business of insurance. Commissioner Mais said he does think proxy discrimination has to be in the document, and disparate impact is a recognized

term. He said the proxy variable is a separate thing and having the two together does tend to unnecessarily confuse the issue. Commissioner Afaible said he agrees that the North Dakota language helps clarify the points we are trying to make and gives direction to AI actors. He said it may not be perfect, but it is directionally correct. Ms. Lohmann said Minnesota would be in favor of the proxy discrimination language over the proxy variable, which seems directional, but the purpose of the proxy discrimination language is to capture the unintentional. Therefore, to Commissioner Ommen's point, Ms. Lohmann said this is aspirational, and considering all things that might proxy a prohibited variable should be included. Commissioner Conway said the proxy discrimination language is needed. He asked whether it is necessary to call this out specifically in this document if there are truly legitimate business purposes in play that do not lead to proxy discrimination. He did say this is directionally headed in the right way. Commissioner Altman said the inclusion of the proxy discrimination language is critical in terms of thinking about this as an aspirational document and recognizing the risk.

J. Bruce Ferguson (American Council of Life Insurers—ACLI) said the ACLI believes that racial discrimination in any form, direct or indirect, is wrong; therefore, the ACLI would support the goal of the AI Principles and the Working Group's desire to move forward with them. He said the ACLI would agree to including, at this point, a reference to proxy discrimination. He said the concept of proxy discrimination is somewhat new, and it was just introduced into the guiding Principles on June 3. He said that in looking at a number of comment letters, and as Commissioner Ommen pointed out, they all seem to differ somewhat regarding what is meant by the concept of proxy discrimination. He said that for the ACLI and within the life insurance context, it really means that AI should not be used to make underwriting decisions that would otherwise be prohibited by life insurance unfair trade practices laws as unfair discrimination. He said these guiding Principles are really intended to inform the work of other NAIC initiatives and for that matter individual state actions, so it is important to reach a common understanding among all the stakeholders as to what proxy discrimination means. He said he thinks this can be accomplished without delaying the progress made on the Principles.

Commissioner Godfreed said he has reviewed many AI Principles documents, and this document is one of the most balanced in terms of recognizing that there will be some challenges as we move into utilizing this technology, but not having perfect definitions is expected, as this is an evolving space. He said this is a directional document for the NAIC, and there will need to be discussions regarding what is acceptable and what is unacceptable; that may need to happen at the different committees as these issues come forward. He said it is important to keep moving forward. Mr. Latza expressed support for Mr. Birnbaum's concept regarding proxy discrimination, but the reason we are having the debate is because of failing to differentiate between these concepts. He said rather than wed the AI Principles to a particular legal construct, the Working Group should focus on the goal that insurance decisions should not be made solely on the basis of constitutionally protected classes, which is not to say there cannot be discrimination on an actuarial basis. He said if this principle is phrased in such a way so as to get away from the means and what we are trying to achieve, we can come up with something better.

Commissioner Ommen said the ACLI perspective is helpful. He said one must understand causation. He said one of the most emotional subjects is law enforcement, and data clearly supports the idea that there has been discrimination in a number of different ways that is clearly racially connected. He said you must be able to separate out what is flawed and what is good, actuarially supported data. He said it appears that a lot of the information being used is flawed because it unfairly selects based on race. He said he values this AI Principles document as a guidance, and the Working Group needs to have honest conversations about variables that are being used, but it cannot use unintentional disparate impact to conclude that something is wrong with the insurance model. He said using the term proxy discrimination may draw some people to conclude that we are talking about disparate impact, and he does not believe that we should.

Commissioner Conway said he is not so sure that it should just be accepted that societal problems and issues is a part of our insurance regulatory system. He said we need robust conversation about that, and he is not convinced that this should not be part of the discussion at this time. Commissioner Ommen said he agrees, and a lot of things are unequal and unjust; some of those factors are part of a rate making system. He said our eyes must be open as we discuss this because you cannot automatically conclude that the ratemaking process is improper. He said there are inequities that have been in our country for a long time that are being addressed and should be in the discussion. Commissioner Conway said the insurance industry should not be perpetuating those problems, and we should be discussing how to stop those activities. Commissioner Godfreed said the current version of the Principles has language about absent negligence saying that if something is wrong, it simply needs to be corrected and does not call for punitive penalties. He said this is a balancing act.

Mr. Birnbaum said characterizing proxy discrimination as something vague and just a legal term is quite depressing. He said state insurance regulators have been looking for proxy discrimination forever, and when rating factors are filed that do not make sense, state insurance regulators have always looked to see if it is some kind of proxy for something else. He said the idea that the concept is untested or unknown is wrong, as it has been around as a legal concept in the fair housing act for over

40 years and in insurance for decades. He said the language in the proposal is clear, and it does not need any embellishment by adding the term “proxy variables.” He said the high-level Principles are there to say insurers should be proactive because of the much greater risk of discrimination with AI algorithms. He said the language is sufficient, and discussion regarding proxy variables should be part of the model law development.

Ms. Gleason said this is an important conversation. She said the term “proxy discrimination” raises concerns, and she would recommend replacing it with “prohibited discrimination.” She said that would keep the conversation moving.

Andrew R. Pauley (National Association of Mutual Insurance Companies—NAMIC) said NAMIC cannot support the proxy discrimination language, as it is not defined in the document. He said it goes against the high-level aspirations of the document by including a very nuanced legal determination concerning these issues. He said NAMIC does not support unfair discrimination or any type of intentional discrimination; however, any attempt to remove rating factors that are actuarially justified and improve the predictive value of rating plans would be a move away from risk-based pricing, and NAMIC supports risk-based pricing. He said NAMIC has significant concerns, and it cannot be said that this is just an internal document, as the NAIC is a standard-setting body by its own definition, so when this document is created with this terminology without definition or understanding of what we are talking about, it is going to create confusion, litigation risk and new duties out in the public once it is released. He said the lack of a definition is not going to provide any guidance to future work streams, and it can do more harm than good. He said NAMIC applauds the work of the Working Group and understands the intention, but this has been a rushed process and forcing the issue in this manner is disconcerting to say the least. Commissioner Godfreed said he takes exception to characterizing this as having been rushed. He said documents about the use of ethical algorithms or AI generally have a section denoting ethical and fairness, including proxy discrimination, and to somehow assume the term is not understood is not factual and he could not agree to that. He said there is a firm understanding of what it is, and it will be further developed as state insurance regulations are flushed out. He said many insurer chief executive officers (CEOs) have made statements over the last six weeks about doing better and being a part of the solution. He said on the NAIC member call, Director Farmer said we are going to take proactive steps to address some of these top of mind issues.

Richard L. Bates (State Farm) said he has read a lot of the documents that talk about proxy discrimination and disparate impact, and one of the articles says that for underwriting purposes, geography would be considered a proxy for race. He asked if that would carry over to the rating variable because geography is an acceptable rating factor. He said State Farm is opposed to unfair discrimination, but it is waiting to see the legislation that says geography cannot be used as a rating factor based on the idea that it would be considered a proxy for a prohibited characteristic.

4. Adopted the AI Principles

Ms. Jabourian made a motion, seconded by Commissioner Conway, to adopt the NAIC Principles on Artificial Intelligence Version 5 (Attachment Three-B) with the addition of the introductory language proposed by the APCIA, as amended. Commissioner Godfreed asked for a roll call vote. California, Colorado, Connecticut, Florida, Illinois, Indiana, Maryland, Minnesota, Missouri, New Hampshire, North Dakota, Pennsylvania, Tennessee, Vermont and Wisconsin voted in favor. Iowa abstained. The motion passed.

5. Discussed its Timeline and Next Steps

Commissioner Godfreed said the adopted version of the Principles will be distributed, posted on the Working Group’s webpage, and forwarded to the Innovation and Technology (EX) Task Force for consideration. He said comments will be accepted until July 20 and discussed on the Task Force call on July 23. He said comments and changes could continue to be discussed with the possibility of adoption during the Task Force’s meeting the week of Aug. 3.

Having no further business, the Artificial Intelligence (EX) Working Group adjourned.

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**American Property Casualty Insurance Association (APCIA)
Introductory Language Amendments**

North Dakota Insurance Department, Artificial Intelligence (AI) Principles
Suggested Introductory Language
May 18, 2020

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 (hereafter referred to as “AI actors”) adhere to these fundamental principles, aspire to 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 ~~and best practices~~ for AI actors. ~~Although~~ these principles are guidance and do not carry the weight of law or impose any legal liability. ~~However, this guidance, they should can~~ serve to inform and establish general expectations for AI actors and systems emphasizing the importance of accountability, compliance, transparency, and safe, secure and robust outputs, ensuring both are accountable, compliant, transparent, safe, secure and robust and produce outputs that are fair and ethical.

Further, **THIS DOCUMENT**

Should be used to assist regulators and NAIC committees addressing insurance-specific AI applications. The level of regulatory oversight will vary based on the risk and impact to the consumer. These principles should be interpreted and applied in a manner that accommodates the nature and pace of change in the use of AI by the insurance industry and promotes innovation, while protecting the consumer from harm.

~~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 (hereafter referred to as “AI actors”) adhere to these fundamental principles.~~

~~**CALLS ON** all AI actors to promote, consider, and monitor, the following principles for responsible stewardship of trustworthy AI, according to their respective roles.~~

UNDERLINES that the following principles are complementary and should be considered ~~as a whole~~ in totality.

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

RECOMMENDS that insurance companies and all persons or entities facilitating the business of insurance that play an active role in the AI system life cycle, including third parties such as rating and advisory organizations (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 safe, secure and robust outputs.

Further, **THIS DOCUMENT**

Should be used to assist regulators and NAIC committees addressing insurance-specific AI applications. The level of regulatory oversight may vary based on the risk and impact to the consumer. These principles should be interpreted and applied in a manner that accommodates the nature and pace of change in the use of AI by the insurance industry and promotes innovation, while protecting the consumer from harm.

Fair and Ethical

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

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.

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.

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, 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 proactive disclosures include revealing the kind of data being used, the purpose of the data in the AI system and consequences for all stakeholders.
- 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.

Secure, Safe and Robust

- a. AI systems should be robust, secure and safe throughout the entire life cycle so that in conditions of normal or reasonably foreseeable use, or adverse conditions, they can function in compliance with applicable laws and regulations. To this end, AI actors should ensure a reasonable level of traceability in relation to datasets, processes and decisions made during the AI system life cycle. AI actors should enable analysis of the AI system's outcomes, responses and other insurance-related inquiries, as appropriate in keeping with applicable industry best practices and legal requirements.
- b. AI actors should, based on their roles, the situational context and their ability to act, apply a systematic risk management approach to each phase of the AI system life cycle on a continuous basis to address risks related to AI systems, including privacy, digital security and unfair discrimination as defined by applicable laws and regulations.

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Draft: 6/18/20

Artificial Intelligence (EX) Working Group
Conference Call
June 3, 2020

The Artificial Intelligence (EX) Working Group of the Innovation and Technology (EX) Task Force met via conference call June 3, 2020. The following Working Group members participated: Jon Godfread, Chair, Chris Aufenthie, Chrystal Bartuska, John Arnold and Mike Andring (ND); Mark Afable, Vice Chair, Timothy Cornelius, Jody Ullman, Mark Prodoehl, Nathan Houdek, Barbara Belling, Renee Fabry and Mary Kay Rodriguez (WI); Tom Zuppan and Vanessa Darrah (AZ); Lucy Jabourian (CA); Peg Brown (CO); George Bradner (CT); Rebecca Smid and Nicole Altieri Crockett (FL); Doug Ommen and Travis Grassel (IA); Judy Mottar (IL); Jerry Ehlers (IN); Ron Coleman (MD); Phil Vigliaturo (MN); Cynthia Amann (MO); Kathy Shortt (NC); Christian Citarella and Emily Doherty (NH); Barbara D. Richardson (NV); Tynesia Dorsey (OH); Michael McKenney and Shannen Logue (PA); Rachel Jade-Rice (TN); and Christina Rouleau (VT). Also participating were: Brenda Johnson and Tate Flott (KS); Troy Smith (MT); and Randall Currier (NJ).

1. Adopted its May 5 Minutes

The Working Group met May 5 and took the following action: 1) adopted its Feb. 19 minutes; 2) continued reviewing the draft Principles on Artificial Intelligence (Principles); and 3) reviewed a proposed timeline for adoption of the AI Principles.

Commissioner Richardson made a motion, seconded by Ms. Brown, to adopt the Working Group's May 5 minutes (Attachment Three-C1). The motion passed unanimously.

2. Reviewed Draft Principles Version 4

Commissioner Godfread said the goal is to review the changes to version 4 of the Principles draft agreed to during the Working Group's last meeting and go over a few other items. He said the document posted to the website represents the changes accepted by the Working Group based on the comments provided, but as noted in that document, there are a couple of outstanding questions and few things to discuss.

Commissioner Godfread said changes noted represent some clean-up done by North Dakota and Wisconsin staff working with Denise Matthews (NAIC). He said changes represent suggestions for cleaner or more correct language as suggested by the NAIC editors but do not represent substantive changes. He said they are intended to improve and make the language more consistent. He asked if anyone had any concerns about those changes. Hearing none, he said that paragraph (b) under the Accountable section seemed to more appropriately belong in the Transparent section, so that change was made as well. He asked if there are any corrections or concerns about version 4 of the draft artificial intelligence (AI) Principles as posted. Ms. Jabourian said "according to applicable law" under the Accountable section (a) is not needed, and "federal and state" is not needed under the Compliant section (a). She also said moving the paragraph to the Transparent section is appropriate.

Birny Birnbaum (Center for Economic Justice—CEJ) said one of the core consumer protection issues with AI is the increased potential for unfair discrimination caused by the use of data that reflect historical discrimination against protected classes or discrimination by proxy. He said simply avoiding intentional discrimination is not enough and suggested the principles are missing this key issue of responsibility for AI developers and users to identify and minimize proxy discrimination against protected classes. He suggested adding "to avoid proxy discrimination against protected classes" to the end of the first sentence in the Fair and Ethical section part (b) to address that concern.

Ms. Jabourian asked if it would be appropriate to add "including unfair discrimination" to the end of the last sentence in the Fair and Ethical section (b) to address Mr. Birnbaum's concern. Mr. Birnbaum said the term "proxy discrimination" needs to be added because most in the industry think "unfair discrimination" means "intentional," and in this case, if there is an intent to address unintentional discrimination, it needs to be specifically stated.

Commissioner Ommen said this is a complex and difficult issue, and he is concerned about using language that is not well understood or well developed in a guidance document. Mr. Birnbaum said Commissioner Ommen seems to be saying there is a legal system in place that does not identify proxy discrimination, and it is an undefined term. He said when he talks to regulators, they say they have the authority to take action if they find a factor that has a discriminatory effect. Therefore, it

seems to be well understood. Commissioner Ommen said he does not think it is a good idea to use terms that are not uniformly understood in a guidance document.

Mr. Currier said he agrees with Ms. Jabourian's suggestion as a way to address Mr. Birnbaum's concern. Peter Kochenburger (University of Connecticut School of Law) said he prefers to have the "proxy discrimination" language in as well and that there are other terms in the document that could have different meanings in different states. Mr. Kochenburger suggested some language used in a Vatican document related to AI. Commissioner Godfreed said he would be interested in seeing that language.

Scott Kosnoff (Faegre Drinker Biddle & Reath LLP—Faegre Drinker) said he agrees that these words sometimes are not well understood. He said he used to think unfair discrimination was broad enough to include proxies but now is not sure it is. He said the Big Data (D) Working Group asked NAIC staff to come up with a definition for unfair discrimination and what is prohibited in terms of rate making. He said the definition was focused on whether there are equitable differences in expected losses and expenses. He noted that in addition to unfair discrimination prohibitions, a number of states prohibit certain classifications from being considered. He said proxies for prohibited factors does not fit in with what is often thought to be unfair discrimination. Mr. Birnbaum asked if there is agreement that discriminating based on race is not permitted, then why would an algorithm that has the same effect be permitted. He said the only way to prevent that in an era of big data is to take a proactive approach to determine what can be done to recognize and minimize this type of unfair discrimination by proxy. He said there are two types of unfair discrimination, one based on prohibited factors and the other based on lack of a sound actuarial correlation, and the two types bleed into each other. He said that is why it is so important to recognize it in this AI document. Mr. Birnbaum said the words "and to avoid proxy discrimination against protected classes" should be added at the end of the first sentence in the Fair and Ethical section, item (b). He said the key message is to "proactively engage," and it should be considered as an AI model is being developed.

Angela Gleason (American Property and Casualty Insurance Association—APCIA) said that consistent with what Commissioner Ommen said, this is guidance and for NAIC committees as the look at AI applications. She said that is where these conversations should take place, and they are not appropriate for this document. Commissioner Godfreed said the argument to include something of this nature is persuasive. He said as has been pointed out, if proxy discrimination were to be discovered, we would expect to stamp it out and do our best to remove it. He added that this is a big concern with AI and something that has come up on every conference call. He said he would be inclined to include that language as a signal to the other groups that the bias brought about by these types of proxies will need to be addressed. Commissioner Afable agreed and said he would like to have an opportunity to look at this to see if there is a better definition of proxy discrimination. He said it does not necessarily lead to disparate impact but is a practice upon which regulators have consistently taken action. Mr. Bradner agreed there needs to be a statement in the Principles that guides regulators and Working Groups as they develop guidance and standards related to AI. Ms. Jabourian and Ms. Logue agreed. Commissioner Godfreed said that if there are no objections from the Working Group, Mr. Birnbaum's language would be taken under advisement and added for now as this issue continues to be considered. He said as these are aspirational principles, one of the larger aspirations would be missing if something is not included on this. Commissioner Ommen said he fully supports the exploration of this matter but because discrimination is systemic historically, even if there is correlation to risk, it is very difficult to determine what to do about it in insurance. William D. Latza (Lemonade) said he agrees with Mr. Birnbaum and that AI should not be a mechanism to perpetuate these problems. He said actuaries have a good idea of what unfair discrimination is, and there are laws that are fairly clear. He said AI can be a way to resolve this type of discrimination as well, and he would be willing to help to eliminate the noise related to this type of discrimination and work to try to develop language to resolve this very important issue.

Richard Bates (State Farm) agreed with Commissioner Ommen and said this needs to be studied more. He said the industry needs to be part of this discussion. He said there is a lot of litigation risk and not a lot of clarity. Mr. Bates said there may be a more appropriate time to discuss it, given current events, when cooler heads can prevail, and it can be done from a broader perspective. Commissioner Godfreed said right now, it is just a placeholder for future discussion.

Commissioner Godfreed asked the Working Group if there was any additional discussion on removing the "applicable law" and "state and federal" language previously brought up by Ms. Jabourian. He said hearing no objections, those words would be removed from the next version of the Principles.

Mr. Kochenburger said in the second line of the Transparent section related to consumers having a way to inquire about, review or seek resource for AI-driven insurance decisions, the word should be "and" as opposed to "or." Commissioner Godfreed said he agrees, and that change will be made.

Commissioner Godfread commented on the Accountable and the Compliant sections related to potential inadvertent or unforeseen impacts of AI, particularly when it is without negligence. He said he would not like to see use of AI stifled, especially in areas where it can benefit consumers and insurers, by potentially being punitive regarding unintended consequences. He said to that end, he suggests adding language to basically thread the needle between heavy-handed regulation and doing what is right for the consumer. He said he would like to add “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” in the Accountable section right after the sentence ending in “human intervention.” He said he would also like to recommend, in the Compliant section, that the last sentence be: “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.” Commissioner Afbale agreed with the suggested changes. Commissioner Godfread said that if an AI actor is a habitual violator of what is agreed to be inappropriate, other actions would be taken related, but if everything has been done appropriately and yet something adverse comes of it, the thought would be to take corrective action as the remedy. Commissioner Godfread said hearing no comments objecting to this language, it will be included in the next draft.

3. Discussed Comments Related to Introductory Language

Commissioner Godfread said for the discussion on the introductory language, he would draw everyone’s attention to a new document provided with the notice of the meeting and posted on the NAIC website regarding suggested language from the North Dakota Department of Insurance (DOI). He said the APCIA also offered language in its previously posted comments. He asked Mr. Aufenthie to present the North Dakota proposed language. Mr. Aufenthie said the language is intended to clarify that the Principles are intended to be guideposts and high-level guidance and do not necessarily carry the weight of law. Ms. Gleason said the APCIA offered some suggestions previously but would be happy to work with Mr. Aufenthie to make this language a little more robust as this is an important point. She said the APCIA will identify the objectives, to ensure consistency across the NAIC committees and to be clear these are only guidance and do not carry the weight of law. Mr. Latza asked where this document will live and who is actually giving these guidelines. Commissioner Godfread said it is the intention to send this to the Executive (EX) Committee and then to Plenary for adoption. Ms. Matthews confirmed that would be the process and said this will be treated like an NAIC guidance paper. Commissioner Godfread said this document would be within the purview of the Innovation and Technology (EX) Task Force and as innovation and technology projects are worked on by other NAIC committees, this would be something it would review as it starts working on other applications of AI. Mr. Birnbaum said the CEJ likes the North Dakota language and appreciates the APCIA’s comments about this pertaining to NAIC committees and that would be a positive contribution. However, he said the other APCIA comments seem to water down the Principles such that they do not have an affect, so the CEJ would be opposed to that language.

4. Discussed its Timeline and Next Steps

Commissioner Godfread said the Working Group has stated from the beginning that it would like to complete this work expeditiously. He said the goal is for the Principles to be adopted by the Working Group’s parent committee, the Innovation and Technology (EX) Task Force, at the NAIC Summer National Meeting, making it possible for the Principles to be adopted by the full membership by the Fall National Meeting. He reviewed a timeline that would make that possible, including:

- Posting version 5 of the Principles, based on this meeting, by June 15.
- Holding another conference call of the Working Group the week of June 29, with the intention of adopting the Principles.
- Posting the adopted version of the Principles by the end of that week.
- Providing an exposure and comment period.
- Task Force consider adoption of the Principles during the Summer National Meeting.

Having no further business, the Artificial Intelligence (EX) Working Group adjourned.

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Draft Pending Adoption

Attachment Three-C1
Innovation and Technology (EX) Task Force
8/7/20

Draft: 5/21/20

Artificial Intelligence (EX) Working Group Conference Call May 5, 2020

The Artificial Intelligence (EX) Working Group of the Innovation and Technology (EX) Task Force met via conference call May 5, 2020. The following Working Group members participated: Jon Godfread, Chair, Chris Aufenthie, Chrystal Bartuska and Colton Schulz (ND); Mark Afable, Vice Chair, Timothy Cornelius, Barbara Belling, and Mary Kay Rodriguez (WI); Vincent Gosz (AZ); Lucy Jabourian (CA); Peg Brown (CO); George Bradner (CT); David Altmaier (FL); Doug Ommen and Andrea Seip (IA); Judy Mottar (IL); Rich Piazza (LA); Ron Coleman (MD); Phil Vigliaturo and Tammy Lohmann (MN); Cynthia Amann (MO); Kathy Shortt and Tracy Biehn (NC); Christian Citarella and Emily Doherty (NH); Barbara D. Richardson (NV); Mark Hamlin (OH); Ron Kreiter (OK); Rachel Jade-Rice, David Combs and Bill Huddleston (TN); and Christina Rouleau and Kevin Gaffney (VT). Also participating were: Mark McGill and Randall Currier (NJ); Matt Homer (NY); Daniel Morris (SC); Maggie Dell and Travis Jordan (SD); Nancy Clark (TX); and Tracy Klausmeier (UT).

1. Adopted its Feb. 19 Minutes

The Working Group met Feb. 19 and took the following action: 1) adopted its Feb. 4 minutes; 2) continued reviewing the draft *Principles on Artificial Intelligence* (Principles); and 3) reviewed a proposed timeline for adoption of the Principles.

Mr. Kreiter made a motion, seconded by Commissioner Ommen, to adopt the Working Group's Feb. 19 minutes (Attachment Three-C2). The motion passed unanimously.

2. Reviewed Draft Principles Version 3 Comment Letters

Commissioner Godfread asked for general comments related to version 3 of the Principles draft. Hearing none, he said he wants to begin the discussion by going section by section, deferring the reviewing of comments related to the introductory section until later.

Commissioner Godfread said the American Property Casualty Insurance Association (APCIA) offered suggested language to replace or revise the term "risk-based" to eliminate any confusion related to how the term is used within a rating context. He asked if any of the trade associations on the call would like to speak to it, but hearing no comments from those representatives, he asked Mr. Aufenthie if he would like to comment. Mr. Aufenthie said the APCIA suggested replacing the term "risk-based" with "appropriate," which seems in line with what the Working Group is looking for. It would read "appropriate use of artificial intelligence," not to be confused with how it is used within the context of rating. Mr. Aufenthie said he agrees with this change. Commissioner Richardson said she prefers that language as well. Denise Matthews (NAIC) also pointed out another place in the Accountable section where the sentence was modified to replace the term "risk-based" with "...appropriate mechanisms and safeguards consistent with the degree and nature of the risks posed by AI..." Ms. Jabourian asked how the word "appropriate" would be defined within this context. Mr. Aufenthie said given that this document is intended to be high level, the assumption is that it would be defined more specifically later, but he said he is open to suggestions regarding alternatives. Ms. Jabourian said she just wants to understand this better. Commissioner Godfread said these principles are intended to be a guiding framework and not a law or regulation. Commissioner Richardson said it will be easier to know what is inappropriate than appropriate, and you will not know until you see it.

Mr. Currier said he is not sure the word "appropriate" is even needed. Commissioner Godfread said the Working Group could discuss that when it gets back to the section by section review. He directed the Working Group member's attention to the Fair and Ethical section of the Principles. He said he is comfortable with the American Council of Life Insurers' (ACLI's) suggested revisions to this section. Commissioner Afable agreed that the ACLI language is acceptable.

Commissioner Godfread asked if anyone had any additional comments on the Fair and Ethical section. Hearing none, he asked Mr. Aufenthie to walk through the changes to the Accountable section. Mr. Aufenthie said a few of the comments that were suggested limited the Principles to "regulated entities." He asked if the Working Group wants it limited to regulated entities or applied to a broader group like third parties and other artificial intelligence (AI) actors. Mr. Bradner said third parties may be selling AI products to insurance carriers and state insurance regulators, so those parties should be included. Ms. Jabourian and

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Ms. Brown (CO) agreed. Commissioner Richardson said her regulatory authority is limited to the regulated entity; therefore, she might disagree. Commissioner Godfread said he agrees with that statement in a practical sense, but this would send a signal to the third-party entities that they were expected to follow these principles, and there may be some value in doing that. Commissioner Richardson agreed.

Andrew R. Pauley (National Association of Mutual Insurance Companies—NAMIC) said NAMIC still has two significant concerns with the Principles, the first being its applicability even if the result is unintended, as it is not considered to be the current state of the law. He would ask that the last part of that sentence be stricken or at least the language “according to law” be added so that it is very clear. He also said NAMIC objects to the “right to seek recourse” language, suggesting that it could be written in other ways, and the ACLI has proposed some alternative language.

Commissioner Godfread asked if the Working Group members have any comments related to Mr. Pauley’s comments. Mr. Bradner said he thinks the language needed to be there, but he does not object to adding “according to law.” He believes companies should not be able to hide behind a contention that they did not know something was happening. He said that can be the outcome if the company is not doing due diligence and testing to be sure they are understanding how the AI is working. Ms. Jabourian agreed with Mr. Bradner. Mr. Aufenthie said he is okay with the language “according to law,” but when talking about AI, he thinks the unintentional phrase still needs to be there. Commissioner Godfread agreed, and he said the comments were valid regarding unintended outcomes and the guidance is intended to apply to the “unintended” as well. Mr. Currier asked for clarification regarding the language “according to current law” and whether that is referring to the law as of the date of this document or in the future as the law evolves. Commissioner Godfread said his intention was the current laws of the times, so it is not frozen as of the date of this document. Mr. Currier said the addition of the last sentence by the APCIA that states, “[t]he information may be presented to the regulator and consumer differently” is concerning. Lisa Brown (APCIA) said changing the word “current” to “applicable” might make this more of a living document, the intent behind the language related to presenting information differently to a consumer is to acknowledge the level of specificity, and detail may need to be greater for a state insurance regulator than a consumer. Peter Kochenburger (University of Connecticut School of Law) said the language, as is, would be preferable even with the addition of “applicable law” and “unintended” only implies that there is a responsibility to get it corrected. He said it does not necessarily speak to whether it would be a cause of action or a violation of any law. He said there must be some recourse for a problem, but this document is not saying what that must or should be, so both are well phrased as they are.

Scott Kosnoff (Faegre Drinker Biddle & Reath LLP—Faegre Drinker) said he encouraged state insurance regulators to consider where they want the laws to evolve to as opposed to where it exists today and to let that guide future efforts and NAIC workstreams. Commissioner Godfread said that is the intention, and he asked the Working Group members’ preference regarding the use of the term “current” versus “applicable” regarding laws and regulations. Mr. Kosnoff and Mr. Kochenburger both agreed that “applicable” is preferred. Commissioner Godfread agreed, and he said the ability to seek recourse needs to be there; he said that while the Principles do not carry the weight of law, there has to be recourse available to consumers. Commissioner Afable agreed that the language related to seeking recourse should stay in the Principles for the reasons already stated.

Commissioner Godfread asked about the suggestion from the APCIA that there be a different presentation of information to consumers than to state insurance regulators. Ms. Brown (APCIA) indicated that different levels of disclosure may be necessary for consumers versus state insurance regulators, not to minimize anything that needs to be disclosed to a consumer but to recognize that a state insurance regulator may need much more information than a consumer. Ms. Jabourian said if the intention behind a different presentation of information to consumers is to make it easier for the consumer to understand, she could agree with that, but not if that is intended to signify that it would be limited in scope.

Commissioner Godfread asked the Working Group members if they wanted to include any kind of language related to acknowledging that something may go wrong even when good, strong, best practices are followed. Mr. Bradner said this would come down to a case by case situation and trying to craft language to soften that is not appropriate. He said each case will have to be reviewed on its own merits. Mr. Aufenthie said the APCIA’s suggested language does try to address that concern, but the point of reviewing each case on its own merits makes sense. Commissioner Godfread agreed that adding language may muddy the waters. Mr. Currier said it gets into creating legal defenses; therefore, it is probably not appropriate. Mr. Kosnoff agreed, but it does raise an important point, as there will be mistakes, but the intention is for the carrier to be responsible in terms of what they do with AI. Mr. Citarella said it goes beyond the scope of the document, and it does not need to be included. Ms. Brown (APCIA) and Commissioner Richardson agreed. Commissioner Godfread agreed, and he said that while there is an

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understanding, there will be mistakes and those will have to be navigated to ensure that the response is not too harsh; this gets too far into the weeds for this document.

Mr. Aufenthie reviewed the comments received on the Transparent section related to disclosure and whether it needs to be narrowed down to be more specific and protect proprietary information. Commissioner Afable said the Working Group continues to discuss whether this document should be narrowed down, but given that it has also repeatedly been said it is intended to be a guideline, it seems that it should stay broad; therefore, he said he would not favor the suggested narrowing language. Mr. Bradner agreed with Commissioner Afable. Mr. Pauley said NAMIC suggested including materiality language, and he said adding the word “relevant” to “stakeholders” would be helpful if the intention is to provide guidance to future workstreams. William D. Latza (Lemonade) said the last sentence of the Transparent section related to “proactive disclosures,” including the kind of data being used, the purpose in the AI, and consequences for stakeholders combined with the ability for consumers to change the information, is very prescriptive language and it could be an invitation to consumers to “game” the system or be fraudulent. He suggested changing the word “proactive” and inserting a particular purpose regarding disclosures that enable consumers to modify risky behavior or to correct misinformation. Mr. Aufenthie said he views this as similar to what is done related to credit scoring where the consumer knows where to go to correct their data. Mr. Latza said he agrees with that, but giving consumers a roadmap to manipulate the data is a bad idea. Ms. Jabourian said the language should be kept as is because a consumer has a right to know if information is being used and where the data is coming from, such as social media. She said to the degree that it has an adverse impact, the consumer has a right to know. Mr. Kochenburger agreed with Ms. Jabourian. Mr. Currier said the ACLI’s suggested language related to non-proprietary is a little concerning and not helpful. Commissioner Godfreed said it would be left as is for now.

The language suggested by Shannen Logue (PA) was discussed. Commissioner Godfreed said the language was intended to keep this more future thinking and the use of the term “applicable” as opposed to “current” again should cover that well. He also said there was no objection to adding “as defined by law and regulation,” as suggested by the ACLI.

3. Discussed Timeline and Next Steps

Commissioner Godfreed said the Working Group will create a redline version of these changes and provide an opportunity for review. He said there will be another conference call to review introductory language and the new redline draft and cover the other sections and comments.

Having no further business, the Artificial Intelligence (EX) Working Group adjourned.

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Draft: 2/25/20

Artificial Intelligence (EX) Working Group
Conference Call
February 19, 2020

The Artificial Intelligence (EX) Working Group of the Innovation and Technology (EX) Task Force met via conference call on Feb. 19, 2020. The following Working Group members participated: Jon Godfread, Chair (ND); Vanessa Darrach (AZ); Lucy Jabourian (CA); David Altmaier and Rebecca Smid (FL); Andria Seip and Travis Grassel (IA); Judy Mottar (IL); Amy Beard (IN); Michelle Johnson (LA); Ron Coleman (MD); Phil Vigliaturo (MN); Cynthia Amann (MO); Christian Citarella (NH); Barbara D. Richardson (NV); Mark Hamlin (OH); Ron Kreiter (OK); Shannon Logue and Michael McKenney (PA); David Combs and Allison May (TN); and Christina Rouleau (VT). Also participating were: Michelle Scaccia (MT); Chris Aufenthie (ND); Randall Currier (NJ); Olivia Bumgardner (NY); G. Lee Hill, Jr. (SC); and Rachel Hemphill and Nancy Clark (TX).

1. Adopted its Feb. 4 Minutes

Commissioner Godfread said the Working Group met Feb. 4 to review the comments received on the Working Group's artificial intelligence (AI) principles draft exposed at the 2019 Fall National Meeting.

Commissioner Richardson made a motion, seconded by Commissioner Altmaier, to adopt the Working Group's Feb. 4 minutes (Attachment Three-C3). Mr. McKenney said the minutes reflect that he has concerns about potentially excluding third parties such as rating and advisory organizations. He said he provided that comment regarding the first paragraph in the draft starting with "Recommends." He said he was suggesting language to that effect be included after the "... that play an active role in the AI system lifecycle" to make clear they would be included in the definition of "AI actors." Commissioner Richardson and Commissioner Altmaier accepted the change as a friendly amendment to their motion and second to adopt the minutes. The motion passed unanimously.

2. Heard Introductory Remarks

Commissioner Godfread reiterated that the purpose of this document is to be a very high-level working document essentially providing guideposts for the NAIC and other workstreams touching on this area. He said it is not intended to be interpreted as a model law or regulation but rather is a principles-based document that state insurance regulators can use as they look at how AI affects the many different areas of insurance.

3. Reviewed its Draft Principles

Commissioner Godfread started with comments related to the Compliant section of the draft. He said a change was suggested for the first sentence to read: "AI actors must have resources in place to ensure compliance with all applicable federal and state insurance laws and regulations." Angela Gleason (American Property and Casualty Insurance Association—APCIA) said the APCIA offered that language because it would be very difficult for one person to have specific knowledge of all laws and regulations. Mr. Citarella said he offered a similar suggestion in his comments to ensure the responsibility would not fall on the modelers themselves. He agreed that the language proposed by the APCIA would cover his concern. Ms. Jabourian emphasized that there are modelers getting licensed as producers and insurers are then using those modelers, so it is important that the modelers, who are AI actors, have knowledge of insurance laws and regulations. Mr. McKenney agreed that everyone involved needs to know the insurance laws and regulations. He said "specific knowledge" maybe too strong, but they should have the knowledge. Commissioner Godfread said he thinks that is the intention of the offered language and said he would be comfortable with it saying they must have "the knowledge and the resources." He asked if the Working Group was good with: "AI actors must have the knowledge and the resources in place to ensure compliance with all applicable federal and state insurance laws and regulations." There were no objections to that language.

Commissioner Godfread said the only comment on the second sentence under the Compliant section was to add the words "as well" as a grammar clean-up. He said there were comments to remove the third sentence altogether. Brian Bayerle (American Council of Life Insurers—ACLI) said the ACLI recommends removing it because it is redundant and unnecessary. Ms. Gleason said the APCIA agrees and if it remains, it would hold the AI actor to a higher burden and level of compliance than is found in any other insurance law or practice. Commissioner Godfread said this sentence intends to make clear that regardless of the intent, the reality is the buck will stop with the insurer if there is a bad outcome. Mr. Currier said that makes sense but what might be missing from the sentence is the subject. Commissioner Godfread asked if that was resolved by adding the word

“violation” so the sentence would read: “Compliance is required whether the violation is intentional or unintentional.” Ms. Jabourian and Mr. Vigliaturo agreed with leaving the sentence in and the suggested change. Commissioner Godfreed said there will likely be more discussion on this, but the sentence, with the change, will be left in for now.

Commissioner Godfreed said that the APCIA recommended deleting the fourth sentence. Ms. Gleason said the APCIA does not disagree with the intent of this sentence but it is represented in the Accountable section, so it would be redundant. Commissioner Godfreed agreed with that assertion and deleting the sentence from this section. He said it was suggested the words “cultural, social, and” be removed from the fifth sentence consistent with other areas of the draft. J.P. Weiske (American InsureTech Council—AITC) said the AITC agrees with that recommendation. Mr. Currier said the words “agreed upon” are not necessary as well, and he said he likes the recommendation to include the words “including privacy and data security” to the end of the sentence. Commissioner Godfreed noted there is a recommendation to include “risk-based” in front of the words “monitoring for compliance,” so that will be added as well. He said the sentence will read: “Compliance with state and federal laws is an ongoing process, thus any AI system that is deployed must show consistent risk-based monitoring for compliance with laws and safeguards against outcomes that are either unfairly discriminatory or violate legal standards, including privacy and data security.” Commissioner Richardson said many states have specific “public policy” language in their statutes and asked if the Working Group thinks those will be picked up with the “legal standards” language in this sentence. Commissioner Godfreed said he thinks it would.

Commissioner Godfreed read the first sentence in the Transparent section and then recommended language proposed by New Hampshire. Mr. Currier said he likes the New Hampshire language as well, suggesting there needs to be “AI” added in front of “Actors.” Mr. Vigliaturo said he likes the language as well but recommended adding the words “laws and” in front of “regulations.” Mr. Godfreed said the new language would read: “For the purpose of improving the public’s confidence in AI, AI actors must be transparent about how they use these systems. AI Actors should commit to transparency and responsible disclosures regarding AI systems to relevant stakeholders, including consumers, while maintaining the ability to protect confidentiality of proprietary algorithms and adherence to individual state laws and regulations in all states where AI is deployed. Among 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.”

Ms. Gleason said the APCIA still has concerns about the disclosure being overly robust even though the APCIA supports transparency. She said this is a lot for this stage of the development of the AI process. Ms. Jabourian said this is important language. She said the word “consumer” could possibly be replaced with “regulators,” but transparency is very important to the state insurance regulators. Mr. McKenney said the word “stakeholders” should remain because the issue is broader than just state insurance regulators. Commissioner Godfreed acknowledged the APCIA’s position but said those details will be determined as this moves forward and if those words were removed, it would be effectively gutting this section.

Commissioner Godfreed reviewed the language for the first sentence in the Secure, Safe and Robust section. He suggested the language submitted by the APCIA without the first phrase, so the sentence would read: “AI systems should be robust, secure and safe throughout the entire life cycle so that, in conditions of normal use or reasonably foreseeable use, the AI system can function in compliance with existing laws and regulations.” Ms. Hemphill said she is concerned with taking out the words “or other adverse conditions.” Ms. Gleason said the APCIA was just trying to clean up the language. Scott Kosnoff (Faegre Drinker Biddle & Reath LLP—Faegre Drinker) said this language is in the Organisation for Economic Cooperation and Development (OECD) AI Principles and is intended to provide protection from things like hackers compromising how the AI works. Commissioner Godfreed said he is comfortable with removing those words because that type of activity should be “reasonably foreseeable,” so it is covered. Ms. Hemphill stated she still thinks “other adverse conditions” should be left in because they may not be “reasonably foreseeable.” Commissioner Godfreed said he understands her concern and said the “or other adverse conditions” language will remain for the next draft.

Ms. Gleason said the APCIA recommends removing the second sentence in the section because traceability is more of a transparency concept and, therefore, is already covered. Ms. Jabourian said it should be left in because traceability is more technical than just transparency. She said it makes sure every step is captured so the process is known, not just the outcome. Ms. Gleason said there should be some clarity and specificity around the level of traceability required because this is a technically difficult concept and could require more than what is possible. Mr. Bayerle said the ACLI recommends deleting this sentence as it has concerns about this creating new regulations for AI that would not apply to other programs companies have in place. He also said a lack of clarity may also be a concern. Commissioner Godfreed asked if it would help to add a modifier such as “reasonable level” before “traceability.” Ms. Logue said adding “reasonable” is a good idea and since this is a principles-based document, it is not intended to get into the details of how it will work. Mr. Vigliaturo agreed this is a good compromise. Ms. Jabourian agreed as well. Commissioner Godfreed said that will be added, and the sentence for the next draft

will read: “To this end, AI actors should ensure a reasonable level of traceability in relation to datasets, processes, and decisions made during the AI system lifecycle.”

Commissioner Godfread read the APCIA’s recommended changes to the next sentence. Mr. Currier asked if it would make sense to replace “state of the art technologies, methods or processes” with “best practices.” Mr. Vigliaturo said a difference between “best practices” and “state of the art technologies” is currency, as “best practices” could have been from 20 years ago as opposed to “state of the art” being current. Commissioner Godfread said the intent is to keep these principles broad, so he said he leans more toward “current industry best practices and as required by law.” He said the sentence would read: “AI actors should enable analysis of the AI system’s outcomes and responses to insurance related inquiries as appropriate to the context, and in keeping with current industry best practices and as required by law.”

He said the last sentence in that section received a couple of comments. He said it was suggested that “unfair bias” be replaced with “unfair discrimination.” The Working Group agreed with that language for the next draft of the AI Principles.

4. Discussed its Timeline and Next Steps

Commissioner Godfread said the Working Group will create and send out another redline version of the draft document. He said the goal will be to discuss it at the Spring National Meeting. He said the next draft will be sent out and published by Feb. 28, with a deadline for comments by March 13. He said stakeholders would have an opportunity to make public comments at the Working Group’s meeting at the Spring National Meeting.

Denise Matthews (NAIC) and Mr. Aufenthie noted there are still some issues to get resolved from the first conference call and that it will be the goal to get those incorporated into the next draft to the extent possible.

Having no further business, the Artificial Intelligence (EX) Working Group adjourned.

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Draft Pending Adoption

Attachment Three-C3
Innovation and Technology (EX) Task Force
8/7/20

Draft: 2/18/20

Artificial Intelligence (EX) Working Group Conference Call February 4, 2020

The Artificial Intelligence (EX) Working Group of the Innovation and Technology (EX) Task Force met via conference call on Feb. 4, 2020. The following Working Group members participated: Jon Godfread, Chair (ND); Mark Afable, Vice Chair, represented by Lauren Van Buren (WI); Vincent Gosz (AZ); Lucy Jabourian (CA); Mark Murphy (CT); Rebecca Smid (FL); Doug Ommen, Andria Seip and Travis Grassel (IA); Judy Mottar (IL); Amy Beard and Jerry Ehlers (IN); Rich Piazza and Tom Travis (LA); Ron Coleman (MD); Phil Vigliaturo and Tammy Lohmann (MN); Cynthia Amann (MO); Christian Citarella (NH); Barbara D. Richardson (NV); Mark Hamlin (OH); Ron Kreiter (OK); Shannen Logue and Michael McKenney (PA); David Combs and Allison May (TN); Mike Peterson and Eric Lowe (VA); and Christina Rouleau (VT). Also participating were: Chris Aufenthie and Colton Schulz (ND); Mark McGill and Randall Currier (NJ); Olivia Bumgardner and Marshal Bozzo (NY); Maggie Dell and Travis Jordan (SD); Rachel Hemphill (TX); and Barbara Belling, Sue Ezalarab, and Mary Kay Rodriguez (WI).

1. Heard Introductory Remarks

Commissioner Godfread said the comments submitted are very helpful. He said the intention behind these principles is to provide guiding principles for the NAIC and state insurance regulators across the country to use as the Working Group starts to look at the use of artificial intelligence (AI) in the insurance industry. He said the comments are not intended to be a model law or regulation; they are essentially an internal document to be used as while looking at other working groups and workstreams where AI may be used. He said some of the comments attempt to get more detailed, and the Working Group has been resistant to do that because these are higher level principles or guideposts to be used by state insurance regulators and industry. He said not defining terms is, in some cases, intentional.

2. Reviewed Artificial Intelligence (EX) Working Group Draft Principles Comment Letters

Commissioner Godfread started with comments related to the Preamble. He said that not being too specific with definitions is intended to respect that AI is an evolving space in technology and guidance of this sort is meant to be a high-level review. He said he is hesitant to limit the scope to marketing, distribution, underwriting, ratemaking and claims settlement, as he would hope these principles could be used more broadly, remembering that they do not carry the weight of law. Commissioner Richardson asked if the task could be approached in a piecemeal fashion, as it is difficult to get one's arms around it when it is so broad. She said that it might allow progress to be made a little at a time. Commissioner Godfread asked if it would help to add "any other insurance related usages."

Angela Gleason (American Property and Casualty Insurance Association—APCIA) said it would be helpful to memorialize the intention behind these principles—possibly in the preamble—in order to limit and take this one piece at a time, as suggested by Commissioner Richardson. She said this is a big issue; and in order to ensure that these principles have value, there needs to be an understanding of who the players are and to whom the expectations are related.

Commissioner Godfread said both the APCIA and the American Council of Life Insurers (ACLI) have proposed language that the Working Group can consider to see if some direction can be provided that does not necessarily limit the scope of these definitions. He said he could go either way and was open to feedback regarding the term "AI actors" not being defined and the suggestion that it be limited to a specific list of stakeholders. He said the intention is to keep it broad but related to the business of insurance, so it may be good to define it for those that play a role in insurance. Mr. McKenney said he has concerned about potentially excluding third parties since they may not necessarily facilitate the business of insurance. Commissioner Godfread said he was comfortable leaving it broad to ensure that no one is left out that is participating and expected to consider these principles.

Commissioner Godfread said that under the "Under Calls On" section, it was suggested that "implement" be changed to "consider." He said he was fine with that. He said Pennsylvania provided a comment to add the word "monitor" as well, so that it would say "consider and monitor." He said he would be open to that. Hearing no objections, he said the change would be made.

Draft Pending Adoption

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Commissioner Godfread said that under the “Fair and Ethical” section, the intent was to narrow the language to regulation only with respect to insurance. He said adding the word “unfair” in front of “discrimination” and removing “promotion of fair” would be acceptable to him. Commissioner Richardson asked if the verb “should” should be “must [obey the law]” as it is normally expected that laws must be obeyed. Commissioner Godfread said “should” was consistent with the principles not carrying the weight of law, but he acknowledged Commissioner Richardson’s point. Commissioner Ommen said he appreciated the opening comments regarding the language not carrying the weight of law, which suggests to him that this is an aspirational document in some ways. He said that while he understands Commissioner Richardson’s concern, if it is not a law, then “should” better reflects the intent. He said, regarding the list of things this section and part would pertain to, he felt that “truthfulness” is an important aspiration, and protection of consumer privacy should be included, such as the principles of informed consent. Commissioner Godfread agreed that it would be good to add something about consumer privacy, consumer truthfulness and protection. Mr. Currier agreed with changing “should” to “must” and agreed with adding consumer privacy and protection language. Ms. Jabourian agreed that consumer privacy and protection should be added as well.

Mr. Coleman asked why it was necessary to insert the word “unfair” before “discrimination.” Commissioner Godfread said the concern is that without that word the language could be interpreted as going broader than current law in terms of unfair discrimination. He said such language should tie back to laws already in place for insurance today, like the *Unfair Trade Practices Act* (#880), which helps to guide this document. Commissioner Ommen said the word “discrimination” can unfortunately carry a negative connotation, but that is what risk-based pricing is designed to do. He said that it would be unfair if companies did not give equitable treatment to consumers with similar risks, but without an accepted understanding of what “unfair” means, it is unclear and therefore open to interpretation.

Commissioner Godfread reviewed suggested changes to the “Fair and Ethical” section under Item b. He said it was suggested that the phrases “and society,” “enhancing creativity while,” and “cultural, social, and” be removed and the word “must” be changed to “should.” He said he is comfortable with all these narrowing changes because they keep in line with the authority of insurance commissioners. Mr. Vigliaturo suggested adding the words “for consumers” at the end of the paragraph to make it clearer. Commissioner Ommen said he supports the changes because even though this is an aspirational document, part of the issue is that even with laws regarding fairness, this is even more vague; and since there is a system of laws, there needs to be some tie to that or it is really hard to define. He said state insurance regulators are not ethicists, so this must be kept in mind. Mr. Travis said he agreed with changing “must” to “should.”

Commissioner Godfread said the “Accountable” section received the most comments. He said, in summary, there was a request to remove “principles” from the first sentence. He said based on the suggestions that the new sentence would read, “AI actors should be accountable for ensuring that AI systems operate in compliance with all state principles, consistent with the actors’ roles, the risk-based situational context, and evolving technologies.” Ms. Gleason said the APCIA put forward some of this language and explained that changing “best practices” to “technologies” makes it more definitive and easier for companies to understand. She said “risk-based,” like privacy, is intended to clarify taking a risk-based approach regarding AI systems. Mr. Citarella asked what was meant by “risk-based” because this would not be specific to ratemaking. She said the term “risk-based” in this context does not pertain to ratemaking, but it is more along the lines of a cost and risk versus benefit analysis.

Commissioner Godfread read the proposed second sentence. He said based on the suggestions, the new sentence would read, “Any AI system should be compliant with laws and regulation governing its use of data and algorithms during its phase of the insurance lifecycle.” He said he thought these were good changes. Mr. Vigliaturo said he had concerns with inserting “existing laws and regulations” because this is attempting something that is more along the lines of establishing guiding principles, and the existing regulations may not be quite up to the standards needed to cover behaviors in this area. For that reason, he said he would be against making that change. Commissioner Godfread said the goal is to highlight the laws that might need to be changed, but state insurance regulators do not have the ability to go beyond the existing laws that are in place. He suggested making a new third sentence stating, “Data supporting the final outcome of an AI application should be retained and be able to be produced to the extent similar information is required in non-AI systems in accordance with applicable insurance laws in each jurisdiction.” He said this would address data privacy concerns and establish the expectation that the industry be able to readily produce the data that they are using. Ms. Gleason said this was added for transparency and an accountability issue. Ms. Jabourian said she is not sure about this being the same as non-AI applications, as much of this is unknown; therefore, she is not comfortable with this sentence. She said leaving the matter with the laws and regulations in the jurisdiction would make her more comfortable. Ms. Gleason said the APCIA assumes that these principles are not intending to create a higher burden for AI. Commissioner Godfread said one can get to the same point without highlighting the differences in application insurance

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laws within each jurisdiction and the document reads cleaner without it. Ms. Jabourian agreed that they must comply with the laws in each jurisdiction.

Commissioner Godfread moved on to the next sentence and, based on the comments, suggested changing it to read, “AI actors are responsible for the creation, and implementation and impacts of any AI system, even if certain impacts are not foreseeable.” He asked for comments and there were none. He then moved on to the next sentence. He said it was suggested that the words “risk-based” be inserted before “human” and that the words “or otherwise” be inserted after the word “human.” He said he thought these were good additions. Hearing no objection, he moved on to the next sentence. Based on the suggested changes, he suggested that the sentence be re-worded to read, “Consistent with current requirements, stakeholders should have a way to inquire about, review or seek recourse of the AI-driven insurance decisions.” Ms. Jabourian agreed that consumers and state insurance regulators should have the ability to get access to this information, so leaving this in is important.

Commissioner Godfread read the last sentence in the “Accountable” section, and he said that there were requests to remove it from the section. He said it would be his preference to leave it in. Brian Bayerle (ACLI) said requirements already exist regarding having the right to correctability; therefore it is redundant. Ms. Jabourian said the matter is important from a state insurance regulator’s perspective, and it is not redundant. She said it provides clarity and recommended that it not be removed. Mr. Vigliaturo agreed with Ms. Jabourian, as did Peter Kochenburger (University of Connecticut Law School), and he said the issue has come up in the past and should be left in. Mr. Currier noted that in the previous sentence New Hampshire and Louisiana suggested language defining “stakeholders” that is interesting and should be considered regarding the inclusion of consumers and potential policyholders. Commissioner Godfread asked if putting “which includes regulators and consumers” in parentheses following the word “stakeholders” would make that better. Mr. Currier agreed that it would.

3. Discussed Timeline and Next Steps

Commissioner Godfread said the Working Group will create a redline version of these changes and provide an opportunity to review it. He said there will be another conference call to review the new redline draft and cover the other sections.

Having no further business, the Artificial Intelligence (EX) Working Group adjourned.

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Section 4(H) of NAIC Model Unfair Trade Practices Act

Any of the following practices, if committed in violation of Section 3, are hereby defined as unfair trade practices in the business of insurance:

H. Rebates.

(1) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any life insurance policy or annuity, or accident and health insurance or other insurance, or agreement as to such contract other than as plainly expressed in the policy issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such policy, any rebate of premiums payable on the policy, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the policy; or giving, or selling, or purchasing or offering to give, sell, or purchase as inducement to such policy or annuity or in connection therewith, any stocks, bonds or other securities of any ~~insurance~~ company or other corporation, association or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the policy.

(2) Nothing in Subsection G, or Paragraph (1) of Subsection H shall be construed as including within the definition of discrimination or rebates any of the following practices:

(a) In the case of life insurance policies or annuities, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, provided that any such bonuses or abatement of premiums shall be fair and equitable to policyholders and for the best interests of the company and its policyholders;

(b) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount that fairly represents the saving in collection expenses;

(c) Readjusting the rate of premium for a group insurance policy based on the loss or expense thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year; or

(d) Engaging in an arrangement that would not violate Section 106 of the Bank Holding Company Act Amendments of 1972 (12 U.S.C. 1972), as interpreted by the Board of Governors of the Federal Reserve System, or Section 5(q) of the Home Owners' Loan Act, 12 U.S.C. 1464(q).

(e) (1) The offer or provision by insurers or producers, by or through employees, affiliates or third party representatives, of value-added non-cash products or services at no or reduced costs, when such products or services are not specified provided in the policy of insurance if the product or service:

(a) Relates to the insurance coverage and

(b) Is primarily intended to satisfy one or more of the following:

(1) Provide loss mitigation or loss control;

(2) Reduce claims costs or claim settlement costs;

(3) Educate about risk of loss to persons or property;

(4) Monitor or assess risk, identify sources of risk, or develop strategies for eliminating or reducing risk;

(5) Enhance health or financial wellness;

(6) Provide post-loss services.

(7) Incent behavioral changes that improve the health or reduce the risk of death of the insured; or

- ~~(8) Assists in the administration of underlying employee or retiree benefit policies or with compliance with a state of federal law or regulatory requirement.~~
- ~~(2) The insurer or producer making the offer must clarify that the product or service is not part of the insurance policy and must provide information regarding the assistance, if any, that the insurer will provide should the consumer have an issue with the product or service.~~
- ~~(2 3) The Commissioner may adopt regulations wWhen implementing the permitted practices set forth in (2)(e)(1) this regulation, the Commissioner may adopt regulations for the purpose of to ensureing consumer protection. Issues include Such regulations may address, but are not limited to among others, consumer data protections and privacy, especially instances where third party vendors require policyholder data as a condition of receiving the value added product or service, consumer disclosure and unfair discrimination consistent with applicable law.~~
- ~~(3 4) If the product or service is not made available to all policyholders or applicants clients (defined as policyholders, potential policyholders, certificate holders, potential certificate holders, insureds, potential insureds or applicants), its availability must be based on written objective criteria and offered in a fair and nondiscriminatory manner that is fair and not unfairly discriminatory including, by example, offering the product or service based on risk characteristics of a client.~~
- ~~(5) If an insurer does not have such objective criteria sufficient evidence that the product or service is cost effective or has a material correlation to risk, but has a good-faith belief that the product or service meets the criteria in (H)(c)(1) may mitigate, assess or identify sources of risk of loss or claims, the insurer or producer may provide the product or service in a fair and not unfairly discriminatory manner as part of a pilot or testing program for a reasonable period of time upon approval of the Commissioner.~~
- ~~(4 6) The cost to the insurer or producer offering the product or service to any given policyholder client should be reasonable in comparison to the average that policyholder's client's premiums or the insurance coverage without the provided product or service.~~
- ~~(5) Gifts or offers of gifts in connection with marketing for the sale or retention of contracts of insurance is considered de minimus and not in violation of this statute as long as the cost does not exceed [two hundred and fifty dollars] per person per year;~~

Drafting Note: States may wish to alter the financial limitations set forth in this section depending upon each state's economic environment.

- ~~(f) Notwithstanding any other provision, an insurer or a producer may:~~
- ~~(1) offer or give non-cash promotional or advertising items or meals to or charitable donations on behalf of to a personal lines policyholder or potential policyholder client, as long as the total fair market value actual cost of the non-cash promotion or advertising items and/or meals or charitable donations, for all named or additional insureds in the policy in total, does not exceed an amount set in regulation reasonably determined by the Commissioner per calendar policy year per person and no purchase or renewal of an insurance policy is either expressly or impliedly not required. The offer must be made in a fair and not unfairly discriminatory manner and may not be contingent on the purchase, continued purchase or renewal of a policy;~~

Drafting note – The committee would suggest that, at the time of the drafting of this model, the lesser of 5% of the current or projected policyholder premium or \$250 would be an appropriate limit.

- ~~(2) offer or give gifts or value added services to commercial or institutional insureds clients in connection with marketing for the sale or retention of contracts of insurance, as long as the cost is reasonable in light of the relationship between the parties premium or proposed premium and the cost of the gift or service is not included in any amounts charged to another person or entity; and/or~~

(3) conduct raffles or drawings to the extent permitted by state law, as long as there is no participation cost to entrants, the drawing or raffle does not expressly or impliedly obligate participants to purchase insurance and the prizes are not valued in excess of five hundred dollars a reasonable amount determined by the Commissioner and the drawing or raffle is open to the public. The raffle or drawing must be fair and not unfairly discriminatory and may not be contingent on the purchase, continued purchase or renewal of a policy.

Drafting Note: States may wish to alter the financial limitations set forth in this section depending upon each state's economic environment.

(g) An insurer, producer or representative of either may not offer or provide insurance as an inducement to or interdependent with the purchase of another policy or give or offer to give "free" insurance or otherwise use the word "free" in any offer.

Drafting Note: Section 104 (d)(2)(B)(viii) of the Gramm-Leach-Bliley Act provides that any state restrictions on anti-tying may not prevent a depository institution or affiliate from engaging in any activity that would not violate Section 106 of the Bank Holding Company Act Amendments of 1970, as interpreted by the Board of Governors of the Federal Reserve System. The Board of Governors of the Federal Reserve System has stated that nothing in its interpretation on combined-balance discount arrangements is intended to override any other applicable state and federal law. FRB SR 95-32 (SUP). Section 5(q) of the Home Owners' Loan Act is the analogous provision to Section 106 for thrift institutions. The Office of Thrift Supervision has a regulation 12 C.F.R. 563.36 that allows combined-balance discounts if certain requirements are met.

Drafting Note: Each state may wish to examine its rating laws to assure that they contain sufficient provision against rebating. If they do not, this section might be expanded to cover all lines of insurance.

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Draft: 8/20/20

Innovation and Technology (EX) Task Force
Conference Call
July 23, 2020

The Innovation and Technology (EX) Task Force met via conference call July 23, 2020. The following Working Group members participated: Jon Godfread, Chair, and Chris Aufenthie (ND); Elizabeth Kelleher Dwyer, Vice Chair (RI); Lori K. Wing-Heier represented by Chris Murray and Anna Latham (AK); Jim L. Ridling represented by Gina Hunt (AL); Alan McClain and Letty Hardee (AR); Elizabeth Perri (AS); Evan G. Daniels and Erin Klug (AZ); Ricardo Lara represented by Lucy Jabourian (CA); Michael Conway (CO); Andrew N. Mais (CT); David Altmaier (FL); Colin M. Hayashida (HI); Doug Ommen (IA); Dean L. Cameron (ID); Robert H. Muriel represented by Judy Mottar (IL); Stephen W. Robertson represented by Jerry Ehlers (IN); Vicki Schmidt represented by LeAnn Crow (KS); Sharon P. Clark (KY); James J. Donelon and Tom Travis (LA); Gary Anderson (MA); Kathleen A. Birrane (MD); Anita G. Fox represented by Chad Arnold (MI); Steve Kelly, Grace Arnold and Tammy Lohmann (MN); Chlora Lindley-Myers represented by Cynthia Amann (MO); Mike Causey represented by Tracy Biehn and Kathy Shortt (NC); Bruce R. Range (NE); Chris Nicolopoulos represented by Christie Rice (NH); Barbara D. Richardson (NV); Jillian Froment represented by Rich Campbell (OH); Andrew R. Stolfi (OR); Jessica K. Altman and Michael Humphreys (PA); Raymond G. Farmer (SC); Larry D. Deiter (SD); Hodgen Mainda represented by Rachel Jade-Rice (TN); Kent Sullivan represented by Doug Slape and Michael Nored (TX); Scott A. White represented by Trish Todd (VA); Michael S. Pieciak represented by Emily Brown (VT); Mike Kreidler represented by John Haworth and Michael Bryant (WA); Mark Afaible represented by Nathan Houdek (WI); and James A. Dodrill represented by Joylynn Fix (WV). Also participating: Joana Lucashuk (NY).

1. Discussed AI Principles as Adopted by the Artificial Intelligence (EX) Working Group

Commissioner Godfread said NAIC members made the decision to form the Artificial Intelligence (EX) Working Group during last year's Mid-Year meeting. He said members heard a presentation and spent time discussing artificial intelligence (AI), how it is being driven by the availability of vast amounts of data and ever expanding computing power, and how important it would be to expediently develop guidance in this area for the insurance industry. He said that was the genesis of the Artificial Intelligence (EX) Working Group last June 2019. He reviewed the charge to the Working Group established by the Innovation and Technology (EX) Task Force during its meeting at the NAIC 2019 Summer National Meeting in New York, NY. He said the Working Group has been able to stay on track, holding its first meeting on Sept. 5, 2019, hearing an overview on AI, and covering AI principles generally and the Organisation for Economic Co-operation and Development's (OECD's) AI principles, which have been adopted by 42 countries, including the U.S. He said he and Commissioner Afaible discussed how to approach developing principles for the insurance industry and using the OECD Principles as a basis for developing AI principles for the insurance industry with the Working Group members who agreed that it is an appropriate approach. He said an AI Principles (Principles) draft was first exposed for comment in January 2020 and the Working Group held calls on Feb. 4 and Feb. 19. Then, after a delay due to the COVID-19 pandemic, the Working Group got back to work holding calls on May 5 and June 3. Commissioner Godfread said the Working Group recently met on June 30 where the work was finalized, and the Principles were adopted and again exposed for comment. He said the Principles before the Task Force represent AI "FACTS" for the insurance industry, establishing expectations around its development and use of AI including sections titled, **F**air and **E**thical, **A**ccountable, **C**ompliant, **T**ransparent and **S**ecure/**S**afe/**R**obust. He said these are the key tenets of the Principles.

Commissioner Godfread highlighted a couple of key points related to the Principles. First, he said the industry has been adamant about being clear that these Principles represent "guideposts" and do not carry the weight of law; to that end, specific introductory language was added. He said there have also been sensitivities related to anything that might create new burdens related to adverse consumer impact, given that AI and everything associated with it in terms of big data and algorithms is fairly nascent, and there may be inadvertent or unintentional missteps as we all explore the vast potential of AI and benefits it can bring consumers and the industry, even as we consider and work to mitigate potential risk of harm. He said the Working Group's proposed Principles have "threaded that needle" in a way that can work for everyone.

Secondly, Commissioner Godfread said most have heard a lot about "proxy discrimination" lately, and the potential AI has to use proxies to perpetuate unfair discrimination or fail to identify and eradicate embedded bias against protected classes. The Working Group was sensitive to that issue, and there has been a lot of discussion around this, not only at the Working Group level but with the full membership on more than one occasion.

a. Discussed Comments Related to the AI Principles as Adopted by the Artificial Intelligence (EX) Working Group

Commissioner Godfread opened it up to discussion by the Task Force members. Commissioner Mais presented points from his comment letter. He said the comments were straight forward, and he reviewed them, including the inclusion of data providers in the first paragraph. He said he would also suggest adding the word “fair” in the introductory paragraph beginning with “This Document,” prior to “safe, secure and robust outputs.” He said he also suggests deleting the word “or” between the words “harmful” and “unintended” in the Fair and Ethical section and adding “and corrects and compensates for such consequences when they occur.” He said there will be failures, and this spells out the consequences which is to “correct and compensate.” He said in the next two sections, he will discuss the last sentences as one. He said he has a concern regarding the last sentences in the Accountable and Compliant sections. He said this should be a guiding document, not a regulatory guidance document, and those two sentences represent regulatory guidance. Therefore, he said this is not the place for that, and it could be interpreted as tying the hands of state insurance regulators. He said there needs to be fairness, openness and trust, and he does not think this document should be telling state insurance regulators what they should and should not be doing. Lastly, he said specifically mentioning “consumers” in the Transparent section is concerning because by only mentioning consumers, it might make others think they were not meant to be included, and it would leave out relevant stakeholders.

Commissioner Godfread said he has no concerns with the preamble changes and adding the word “fair” as suggested. He said in regard to the language in the Fair and Ethical section stating, “and corrects and compensates for such consequences when they occur,” that is covered in Part A of the Accountable section, and that shows some balance in terms of what we are trying to do. He said there may be a difference of opinion in terms of how this gets accomplished. He said he does not believe the language ties the hands of state insurance regulators because this is a guiding document. He said the last sentence in both the Accountable and Compliant sections give a nod to the creation of or discussion around a safe harbor and the good actors in this space saying that if you do everything right and follow proper procedures, there will be some regulatory flexibility within the regulatory community. He said the language recognizes that mistakes are going to happen with new technology, especially of this caliber, and there will be unexpected outcomes even with the best intentions. He said the last sentence in the Accountable section covers that, and it allows for a remedy that makes the consumer whole again.

Ms. Jabourian said California agrees with Commissioner Godfread’s comments, but it does have concerns with the proposed language under Subsection b of the Fair and Ethical section. She said there is no need to add that because it is covered under the Accountable section.

Commissioner Godfread asked if any member of the Task Force wished to offer the Connecticut proposed language as an amendment to the Principles. Commissioner Anderson asked if it would be appropriate to take this and comments just recently received under consideration and discuss them during the next meeting of the Task Force. Commissioner Godfread said another exposure draft could be put together and discussed during the next meeting. He asked the Task Force members what might be included in that next draft. Commissioner Anderson said it would be easier to gather the feedback and determine how they might be woven into the document. He said it is difficult to determine the impact of these comments, having not had time to give them more thought. Commissioner Birrane agreed, and she said it would be good to hear the reasoning, but she is not ready to vote on a motion at this point. Mr. Nored agreed that it would be helpful to see another exposure draft on this. Commissioner Godfread said that could be done. Commissioner Conway suggested that the Task Force push hard to vote during the next meeting; endless amounts of time could be spent tweaking and reworking the language and it would still not be perfect, so it is important to recognize the work already done, and it is time to take that next step. Commissioner Godfread said that is the goal, as it does not appear the members are ready to vote on it today. Commissioner Anderson said the delay is not to take away from the good work already done, but just to try to take into consideration the comment letters before taking a vote. Commissioner Ommen said he agrees with thinking this through, and he supports some of Commissioner Mais’ suggestions. He said he wants to propose that the Task Force consider the North Dakota language raised at the Working Group level having to do with proxy discrimination that recognizes avoiding proxy discrimination does not preclude the use of proxy variables for legitimate and acceptable business purposes. Commissioner Ommen provided the example of the correlation between hypertension and race, and he attributes it to various correlations between diet, nutrition and smoking, and to some extent geography and other factors. He said the relationship between hypertension and mortality is based on science, and he expects that there is also a correlation between race and premium as a result of this, but the premium is not the causation of the disparity. He said he thinks the North Dakota language recognizes that there are inequities that need to be carefully looked at and examined, but at the same time the science and the cause need to be addressed without turning the premium rate into a causation. He said he would support the North Dakota language because it ably explains this and captures one of the challenges state insurance regulators will face when dealing with these disparities in society.

Commissioner Godfread said this will be offered as possible language in the next draft of the Principles. He said he would open the discussion to interested parties. Paul S. Graham (American Council of Life Insurers—ACLI) said the ACLI supports the Principles as adopted by the Artificial Intelligence (EX) Working Group. He talked about how life insurers use AI and how important it is today in the marketplace. He said the ACLI supports the wording at the end of the Accountable section, as having a safe harbor is important for new and innovative ideas to come into play. He said the ACLI supports including a reference to proxy discrimination, and it looks forward to working with stakeholders regarding the concept of proxy discrimination in the insurance context, what it means exactly, and how processes and oversight can be put into place to prevent AI from doing what would otherwise not be allowed by regulation or law. He said the ACLI supports the adoption of the Principles as written, and it supports the amendment offered by the North Dakota Department of Insurance (DOI) as being very helpful in framing the concept of proxy discrimination in the insurance context.

Bob Ridgeway (America’s Health Insurance Plans—AHIP) said AHIP believes it would be better and easier to define if the focus on proxy discrimination was narrowed by changing the word “unfair” to “unlawful.” He also said AHIP suggests that in some cases, AI might result in unintentional proxy discrimination, and it would be helpful to include the word “unlawful” again before the words “proxy discrimination” making it easier to regulate.

Angela Gleason (American Property Casualty Insurance Association—APCIA) offered a few additional considerations, saying the APCIA is fully committed to the strict enforcement of discrimination laws and practices, and it understands that the goal is to stress the importance of processes and procedures being in place to proactively engage in responsible stewardship of AI. She said as you look at proxy discrimination, it is important to balance that with ensuring that regulatory objectives, such as consumer protections, are adhered to as well as sound insurance principles grounded in financial solvency. She said the APCIA suggests that terms such as “beneficial outcomes” and “harmful” are subjective and can be removed without changing the intent. She said the APCIA suggests some additional introductory language to provide more clarity, stating that the Principles are not intended to expand current law or create additional laws and last. She said the APCIA suggests the addition of the words “willful and wonton” in front of “negligence,” protecting employees working on these issues.

Commissioner Godfread asked if anyone from the Consumer Data Industry Association (CDIA) wished to present their comments. Hearing none, Andrew R. Pauley (National Association of Mutual Insurance Companies—NAMIC) said NAMIC provided written comments. He said NAMIC respects the NAIC’s response to race discrimination in insurance, and it adamantly opposes discrimination in general, but it is strongly supportive of risk-based pricing in insurance. He asked that if the term proxy discrimination remains in the Principles that it be paired with some statement supporting risk-based pricing as a general concept. He said NAMIC believes that the North Dakota language is very important in terms of approaching an understanding of the concerns listed, and it concurs with the comments made by Commissioner Ommen. He said not much time has been spent discussing the positive aspects of AI in terms of transforming the consumer experience in many positive ways, and he hopes there are not any unintended consequences from the Principles that would have a negative impact on that.

Birny Birnbaum (Center for Economic Justice—CEJ) said the CEJ supports the Connecticut proposals. He said proxy discrimination is clear and appropriate for these principles, and the CEJ opposes the proposed North Dakota language, as it introduces an unrelated concept—proxy variables—that confuses the basic principle. He said he also takes issue with Commissioner Ommen’s suggestion that it is at odds with cost-based pricing, saying that it improves cost-based pricing, and the CEJ provided an example of that in its comments. He said minimizing proxy discrimination does not mean you cannot use a particular variable as you can to the extent that variable is or those variables are, predictive of the outcome but not to the extent they are correlated with a particular class. He said the role of proxy discrimination versus cost-based pricing is also not addressed by the North Dakota language. He said the CEJ opposes using the word “unlawful” versus “unfair” because current law does not envision any action or prohibition against proxy discrimination, and that is what the CEJ wants to see enshrined in these principles. He said the CEJ supports the Connecticut proposals, particularly regarding supposed “safe harbors” in the Accountable and Transparent sections.

b. Discussed Next Steps for the Adoption of the AI Principles

Commissioner Godfread said the next steps are to provide a summary document to the Task Force members with options that may lead to some amendments to the Principles to be discussed during the next Task Force meeting.

2. Discussed Anti-Rebating Draft Model Law Amendments

a. Discussed Comments Related to the Anti-Rebating Draft Model Law Amendments

Superintendent Dwyer provided background on the rebating issue. She said most states have language consistent with the *Unfair Trade Practices Act* (#880), but there is inconsistent application. To clarify that, many bulletins have been issued to explain the intent, creating angst as to what can and cannot be done. Superintendent Dwyer said this has gone on for a long time, so there was a desire to get to some language that allows the consumer benefits to be offered. She said a drafting group was formed to get pen to paper, including eight state insurance regulators, five trade associations, one insurtech startup, one industry representative, a consumer representative, and representation by the National Council of Insurance Legislators (NCOIL). She said the work began on Jan. 27 working with a chair's draft, followed by several conference calls to discuss and revise the draft. She said the drafting group disbanded after its June 3 meeting after creating five drafts and putting the last one out for comment (Attachment Five-A). She said 23 comment letters were received; all were and will continue to be considered, and she reviewed some common themes including:

- H. 2. (e)(1): Some commenters wanted expanded and some wanted more restrictive language, as well as comments requesting additional language to avoid unfair discrimination.
- H. 2. (e)(2): There were comments indicating confusion as to what the language meant and requests to change it to allow the commissioner to create regulations.
- H. 2. (e)(3): Comments requesting more clarity and specificity as to what a pilot and test program would be and limiting the duration to one year.
- H. 2. (e)(4): Comments saying the language is a bit vague and requests to change to be more specific.
- H. 2. (e)(5): There were a number of comments saying that (e)(5) and (f)(1) are talking about the same thing and yet are in two different sections; therefore, recommendations to move it to (f)(1). Comments about what the amount should be or be set by the commissioner, and yet, in another part it stipulates it as [two hundred and fifty dollars], and some suggested that it should be \$500. Again, some comments suggested that the language should be expanded to allow more and others saying it should be more restrictive.
- H. 2. (f)(2): There was a suggestion to add the word "group" in addition to what is there. Superintendent Dwyer noted that the use of that term might bring up issues regarding rebating issues related to commercial insureds in the lender-placed area, and that may be of concern. She said the commenters suggesting that might want to look at that again to see how it could be considered while not creating a situation in which commercial is preferred and people paying the premium are adversely affected.
- H. 2. (f)(3): There were comments that the "five hundred dollars" should be bracketed, and some mention that language in the section is vague.

Superintendent Dwyer then opened it up for comment from the Task Force members. Mr. Murray said Alaska just wants to show support for the draft. Commissioner Mais said Connecticut provided a technical edit. Regarding the specified amounts being set in regulation, he said in some states it is a difficult and time consuming process to change, and it does not offer the flexibility needed, so the suggestion is to add "or otherwise reasonably determined by the commissioner." Superintendent Dwyer asked if putting those amounts in brackets would help. Commissioner Mais said he would prefer to not be locked into a number because it can stay locked in for many years and get woefully out of date. He said he preferred something to the effect of "reasonably determined by the commissioner."

Ms. Lucashuk said she had no additional comments to offer beyond what was provided in writing. Mr. Humphreys said he did not have much to add to Pennsylvania's comment letter either, but he said the specificity was appreciated and he would suggest deleting some of it and providing more of a general approach to rebates not tied to the risk and not having a predetermined amount dictated to the states, allowing them to determine what may be appropriate in their markets. He said it is important to note that in COVID-19 filings they received, carriers were making the COVID-19 benefits contingent on continued purchase or renewals, so it is important to clarify that.

Mr. Bryant said Washington made 13 comments in its letter that covered three areas that are: 1) providing a more direct link with the type of value added benefit of the underlying coverages; 2) suggesting changing terms like "mental state" and "good faith belief" to a more empirical standard; and 3) committing to giving the commissioner regulatory authority over consumer protection issues that arise from this.

Director Ramage said he supports the model, as it strikes a good balance, and he suggested that the drafting note include brief but appropriate comments to remind that there are provisions within the Real Estate Settlement Procedures Act (RESPA) and the Federal Crop Insurance Corporation (FCIC) that might affect the ability to provide rebates. Superintendent Dwyer asked Director Ramage if he could provide language to address that issue, and he said yes.

Ms. Lohmann said the only thing Minnesota would comment on not already mentioned is the concern regarding third parties, regarding whether anyone has any liability or obligation there since they are not licensed and therefore the commissioner would not be giving approval for these services, and most carriers say they have no liability for them. She said there may need to be something addressing that issue in the model. Superintendent Dwyer asked if Minnesota could provide language to that effect, and Ms. Lohmann said yes.

Mr. Ridgeway said the summary of issues provided earlier in the meeting did not mention some of AHIP's comments. Superintendent Dwyer clarified that it was just a general summary, but all letters and comments will be considered.

b. Discussed Next Steps for Completing the Development of Amended Model Law Language

Superintendent Dwyer said the intention is to go through the comment letters carefully and come up with summaries and possibly another draft for discussion during the Task Force meeting on Aug. 7.

3. Discussed its Timeline and Next Steps

Commissioner Godfread said the plan is to create summaries for the comments and continue the discussion during the Task Force meeting on Aug. 7.

Ms. Jabourian said she would like to go on record as stating that California does not agree with changing the word "unfair" to "unlawful" in the Principles.

Commissioner Anderson asked for clarification regarding the timeline for completing the Principles. Commissioner Godfread said they were to be created by the Summer National Meeting. He said significant discussion has taken place both at the Working Group level and on member calls. He said he thinks it is very close, it just needs the final touches and then it will be ready to move forward. He said there has been a lot of discussion in an open and transparent setting; they are guiding level principles for the NAIC, and they will become more defined as related work transpires in other workstreams. He said the Principles do not represent a model law or regulation, but they serve as guideposts that will be considered in terms of guiding that discussion.

Commissioner Altman said she supports the timeline and pushing forward. She said much conversation has already taken place and could continue, but in recognition of all the work and discussion that has already taken place, it is important to move this forward. She said she fully supports doing everything possible to get this wrapped up at the Summer National Meeting.

Having no further business, the Innovation and Technology (EX) Task Force adjourned.

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Section 4(H) of NAIC Model Unfair Trade Practices Act

Any of the following practices, if committed in violation of Section 3, are hereby defined as unfair trade practices in the business of insurance:

H. Rebates.

(1) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any life insurance policy or annuity, or accident and health insurance or other insurance, or agreement as to such contract other than as plainly expressed in the policy issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such policy, any rebate of premiums payable on the policy, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the policy; or giving, or selling, or purchasing or offering to give, sell, or purchase as inducement to such policy or annuity or in connection therewith, any stocks, bonds or other securities of any ~~insurance~~ company or other corporation, association or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the policy.

(2) Nothing in Subsection G, or Paragraph (1) of Subsection H shall be construed as including within the definition of discrimination or rebates any of the following practices:

(a) In the case of life insurance policies or annuities, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, provided that any such bonuses or abatement of premiums shall be fair and equitable to policyholders and for the best interests of the company and its policyholders;

(b) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount that fairly represents the saving in collection expenses;

(c) Readjusting the rate of premium for a group insurance policy based on the loss or expense thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year; or

(d) Engaging in an arrangement that would not violate Section 106 of the Bank Holding Company Act Amendments of 1972 (12 U.S.C. 1972), as interpreted by the Board of Governors of the Federal Reserve System, or Section 5(q) of the Home Owners' Loan Act, 12 U.S.C. 1464(q).

(e) (1) The offer or provision by insurers or producers, by or through employees, affiliates or third party representatives, of value-added products or services at no or reduced costs when such products or services are not specified in the policy of insurance if the product or service:

(a) Relates to the insurance coverage and

(b) Is primarily intended to satisfy one or more of the following:

(1) Provide loss control;

(2) Reduce claims costs or claim settlement costs;

(3) Educate about risk of loss to persons or property;

(4) Monitor or assess risk, identify sources of risk, or develop strategies for eliminating or reducing risk;

(5) Enhance health or financial wellness;

(6) Provide post-loss services.

(7) Incent behavioral changes that improve the health or reduce the risk of death of the insured; or

(8) Assists in the administration of employee or retiree benefit policies.

(2) The Commissioner may adopt regulations when implementing the permitted practices set forth in (2)(e)(1) to ensure consumer protection. Issues include, but are not limited to, consumer data protections, especially instances where third party vendors require policyholder data as a condition of receiving the value added product or service, consumer disclosure, unfair discrimination consistent with applicable law.

(3) If the product or service is not made available to all policyholders or applicants its availability must be based on written objective criteria and offered in a fair and nondiscriminatory manner. If an insurer does not have sufficient evidence that the product or service is cost effective or has a material correlation to risk, but has a good-faith belief that the product or service may mitigate, assess or identify sources of risk of loss or claims, the insurer or producer may provide the product or service as part of a pilot or testing program for a reasonable period of time upon approval of the Commissioner.

(4) The cost to the insurer or producer of providing the product or service to any given policyholder should be reasonable in comparison to the average policy premiums or the insurance coverage.

(5) Gifts or offers of gifts in connection with marketing for the sale or retention of contracts of insurance is considered *de minimus* and not in violation of this statute as long as the cost does not exceed [two hundred and fifty dollars] per person per year;

Drafting Note: States may wish to alter the financial limitations set forth in this section depending upon each state's economic environment.

(f) Notwithstanding any other provision, an insurer or a producer may:

(1) offer or give promotional or advertising items or meals or charitable donations on behalf of to a personal lines policyholder or potential policyholder, as long as the total fair market value of the promotion or advertising items and/or meals does not exceed an amount set in regulation by the Commissioner per calendar year per person and no purchase or renewal of an insurance policy is either expressly or impliedly required;

(2) offer or give gifts or value added services to commercial or institutional insureds in connection with marketing for the sale or retention of contracts of insurance, as long as the cost is reasonable in light of the relationship between the parties; or

(3) conduct raffles or drawings to the extent permitted by state law, as long as there is no participation cost to entrants, the drawing or raffle does not expressly or impliedly obligate participants to purchase insurance and the prizes are not valued in excess of five hundred dollars.

Drafting Note: States may wish to alter the financial limitations set forth in this section depending upon each state's economic environment.

Drafting Note: Section 104 (d)(2)(B)(viii) of the Gramm-Leach-Bliley Act provides that any state restrictions on anti-tying may not prevent a depository institution or affiliate from engaging in any activity that would not violate Section 106 of the Bank Holding Company Act Amendments of 1970, as interpreted by the Board of Governors of the Federal Reserve System. The Board of Governors of the Federal Reserve System has stated that nothing in its interpretation on combined-balance discount arrangements is intended to override any other applicable state and federal law. FRB SR 95-32 (SUP). Section 5(q) of the Home Owners' Loan Act is the analogous provision to Section 106 for thrift institutions. The Office of Thrift Supervision has a regulation 12 C.F.R. 563.36 that allows combined-balance discounts if certain requirements are met.

Drafting Note: Each state may wish to examine its rating laws to assure that they contain sufficient provision against rebating. If they do not, this section might be expanded to cover all lines of insurance.

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