INNOVATION AND TECHNOLOGY (EX) TASK FORCE

Innovation and Technology (EX) Task Force Dec. 4, 2020, Minutes
  Speed to Market (EX) Working Group, Nov. 10, 2020, Minutes (Attachment One)
  Speed to Market (EX) Working Group, Sept. 29, 2020, Conference Call Minutes (Attachment One-A)
  Speed to Market (EX) Working Group, Aug. 27, 2020, Conference Call Minutes (Attachment One-A1)
  *Unfair Trade Practices Act (Model #880)* Amended Language Addressing Rebating Based on the Nov. 4 and Nov. 30 Meetings and Comments Submitted (Attachment Two)
  NAIC Cybersecurity and Data Security/Data Privacy Workstreams (Attachment Three)
  Summary of Requests for Information (RFI) Related to Continuing Specific “Regulatory Relief” or “Regulatory Accommodations” Offered by States Related to the COVID-19 Pandemic (Attachment Four)
Innovation and Technology (EX) Task Force Nov. 30, 2020, Minutes (Attachment Five)
  Innovation and Technology (EX) Task Force Nov. 4, 2020, Minutes (Attachment Five-A)
  Innovation and Technology (EX) Task Force 2021 Proposed Charges (Attachment Five-A1)
  Innovation and Technology (EX) Task Force Oct. 15, 2020, Minutes (Attachment Five-A2)

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The Innovation and Technology (EX) Task Force met Dec. 4, 2020. The following Task Force members participated: Jon Godfread, Chair, and Chris Aufenthie (ND); Elizabeth Kelleher Dwyer, Vice Chair, and Matt Gendron (RI); Lori K. Wing-Heier and Chris Murray (AK); Jim L. Ridling represented by Gina Hunt (AL); Alan McClain represented by Letty Hardee (AR); Evan G. Daniels and Erin Klug (AZ); Ricardo Lara represented by Lucy Jabourian (CA); Michael Conway (CO); Andrew N. Mais and George Bradner (CT); Karima M. Woods represented by Flavian Marwa and Sharon Shipp (DC); David Altmaier, Sandra Starnes and Rebecca Smid (FL); Colin M. Hayashi represented by Kathleen Nakasone (HI); Doug Ommen and Travis Grassel (IA); Dean L. Cameron represented by Weston Trexler (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 D. Anderson (MA); Kathleen A. Brrane and Robert Baron (MD); Eric A. Cioppa and Benjamin Yardley (ME); Anita G. Fox represented by Chad Arnold (MI); Grace Arnold, Tammy Lohmann and Phil Vigliaturo (MN); Chlora Lindley-Myers and Cynthia Amann (MO); Mike Chaney and Andy Case (MS); Matthew Rosendale represented by Bob Biskupiak (MT); Mike Causey represented by Tracy Biehn (NC); Bruce R. Ramge (NE); Chris Nicolopoulos represented by Christian Citarella (NH); Marlene Caride represented by Carl Sornson and Randall Currier (NJ); Barbara D. Richardson and Gennady Stolyarov (NV); Tynesia Dorsey represented by Lori Barron and Amanda Baird (OH); Glen Mulready and Ashley Scott (OK); Andrew R. Stolfi (OR); Jessica K. Altman represented by Michael Humphreys and Michael McKenney (PA); Raymond G. Farmer represented by Daniel Morris (SC); Larry D. Deiter (SD); Carter Lawrence (TN); Texas represented by Michael Nored (TX); Scott A. White represented by Rebecca Nichols and Eric Lowe (VA); Michael S. Pieciak represented by Kevin Gaffney and Emily Brown (VT); Mike Kreidler represented by Molly Nollette (WA); Mark Afable (WI); and James A. Dodrill represented by Joylynn Fix and Erin K. Hunter (WV).

1. Adopted its Nov. 30 Minutes

Commissioner Conway made a motion, seconded by Director Ramge, to adopt the Task Force’s Nov. 30 minutes (Attachment Five). The motion passed unanimously.

2. Adopted its Working Group Reports

a. Big Data (EX) Working Group and Artificial Intelligence (EX) Working Group

Commissioner Godfread provided comments related to the Big Data (EX) Working Group and the Artificial Intelligence (EX) Working Group. He said neither have met since the last time they reported at the Summer National Meeting, so there is no official report or meeting summary to adopt. However, he provided a brief review of the reasons the Task Force’s 2021 proposed charges reflect combining the two groups into the new Big Data and Artificial Intelligence (EX) Working Group.

Commissioner Godfread said as discussed during the Nov. 4 meeting where the 2021 proposed charges were adopted, the decision to combine the Big Data (EX) Working Group and the Artificial Intelligence (EX) Working Group represents a priority and focus being placed on taking “Next Steps” now that the Artificial Intelligence (AI) Principles have been adopted. He said the groups are being combined for the following reasons:

- The two groups are closely related, it would create a lot of overlap and duplicative activity if left as two groups, and it could make the coordination cumbersome or possibly problematic.
- The AI Principles apply to the use of big data and AI, and most governance models contemplate the two together.
- It may be important to not let the use of big data in models and algorithms that may not strictly or technically be defined or considered by some to be AI to fall through the cracks. Combining the groups will help to ensure that does not happen and that the expectations and intent embodied in the AI Principles will be applied everywhere it makes sense and is appropriate.

Commissioner Godfread said researching and building a regulatory framework for AI/machine learning (ML) necessarily encompasses the use of big data, and one really cannot happen without the other, so it makes sense to combine the two. He said it will also create some efficiency and synergy.
Commissioner Ommen said he looks forward to applying the AI Principles developed under Commissioner Godfread’s leadership to the area of big data. He said the Big Data (EX) Working Group had a big charge that not only encompassed just the use of algorithms and rating systems but the entire range of uses and not just in the property and casualty lines but also in life, annuities, health and other areas as well. He said the decision to combine the two working groups is critical, and he agrees with the suggestion that some research be conducted. He said state insurance regulators have come to this discussion with the experiences within their own states and not just in the area of filings but how it is used in marketing, underwriting and other areas. He said this reflects the importance of conducting research so that state insurance regulators can essentially do some problem spotting, design and recognition to make sure they are positioned to determine if additional regulation is needed in order to monitor this area.

Commissioner Godfread said there is still a lot of work to be done. In addition to what Commissioner Ommen talked about, having more presentations from third parties who are in this space and indicate that they have tools, processes or methodologies around auditing for compliance with the intent and expectations laid out in the AI Principles is being contemplated for 2021.

Ms. Nichols gave the report from the Speed to Market (EX) Working Group. She said during meetings of the Working Group prior to the Fall National Meeting, it discussed priorities and charges for the remainder of 2020, including gaining an understanding of current speed to market tools that state insurance regulators find to be the most useful and communicating that to others to ensure their awareness and understanding of these tools. She said the Working Group also discussed parameters and output fields for the System for Electronic Rate and Form Filing (SERFF) Canned Report for Rate Changes expected to be available in early 2021.

Ms. Nichols said during its Sept. 29 meeting, the Working Group discussed communication plans for speed to market tools. She said volunteers were identified to assist with the communication plan, and the Working Group discussed discontinuation of the Product Requirements Locator (PRL). She said this discussion was initiated because the tool has not been utilized as widely as anticipated. She said state insurance regulators and interested parties provided feedback, and they agreed that this needed more discussion and would be a topic for the next Working Group call. She said the Working Group reviewed a draft survey regarding the PRL. She said the survey will be sent to the states that populate the PRL to gather information regarding how valuable it is, if it is being kept up to date, or if there is other information that covers this need. She said there will be a discussion in the future to determine next steps.

Commissioner Conway made a motion, seconded by Commissioner Ommen, to adopt the reports of the Innovation and Technology (EX) Task Force working groups (Attachment One). The motion passed unanimously.

c. Update on the Innovation and Technology State Contacts Activity

Denise Matthews (NAIC) provided a report from the Innovation and Technology State Contacts Roundtable meeting on Dec. 1. She said the group is led by Mr. Bradner and Mr. Aufenthie. She said during this meeting, the group discussed state insurance regulators’ need to have access to timely, relevant, complete, consistent and organized data from industry and the challenges associated with that, given current data collection mechanisms and a lack of data standards and consistency in terms of how the industry collects and stores data. She said Robin Westcott (American Association of Insurance Services—AAIS) provided a presentation on its open Insurance Data Link (openIDL) blockchain Proof of Concept (POC) conducted with eight states participating to collect business interruption/income (BI) data, and the NAIC provided a similar presentation on its Regulatory Data Collection (RDC) system used also to collect BI data from the industry during the early weeks of the COVID-19 pandemic. She said both presentations highlighted the things that went well as well as areas for improvement. Ms. Matthews said the group also discussed whether it would be feasible to work with the Statistical Data (C) Working Group to improve state insurance regulator access to needed data through the development of data standards and possibly researching the value and possible gaps related to statistical plan reporting. Lastly, she said the group concluded that there is common interest in pursuing avenues that might complement or improve state insurance regulators’ access to this type of more timely and possibly granular data, and the co-chairs would be discussing possibilities with NAIC staff in the coming weeks.

Commissioner Godfread encouraged the states to participate in this group, and he asked the Task Force members to think about this data standards issue, noting that it may come up in the future regarding an appropriate structure for pursuing these goals.
3. Discussed Anti-Rebating Draft Model Law Amendments as Amended Based on the Nov. 4 and Nov. 30 Meetings and Comments Submitted

Superintendent Dwyer presented the background related to the Unfair Trade Practices Act (#880) amendments regarding anti-rebating. She said it has been under consideration for almost two years, and a Request for NAIC Model Law Development was adopted by the membership at the 2019 Fall National Meeting to pursue this after determining that state interpretation and the application of anti-rebating laws varies reviewing the history of Model #880, as well as the intent of the anti-rebating portion. She said the Task Force subsequently established a model drafting group that was led by Rhode Island, joined by seven other state insurance regulators from AK, AL, IA, MO, ND, OH and WA, as well as consumer and industry representatives and one state legislator. She said the drafting group published the first draft for comment on June 23; there were two more comment periods for a total of three, culminating in a meeting for oral presentations on Nov. 30. Following the meeting on Nov. 30, she said the drafting team posted another draft (Attachment Two). Superintendent Dwyer walked through the key parts of the draft and the most recent revisions.

Superintendent Dwyer went through each of the changes made since the Oct. 30 draft, including some reorganization of the items and the reasoning behind each. She noted that the draft before the Task Force has a technical error in it related to Section 4(H)(2)(e)(vi) and Section 4(H)(2)(e)(vii) where the word “criteria” is struck out and replaced with “evidence” in Section (vi) when that should have been a change made to Section (vii). Mr. Currier asked about the pilot program, and he said he could not see adopting a default approval on 21-day notice. He said he believes that the Oct. 30 language is closer to what he would prefer. Superintendent Dwyer clarified that this is only for pilot programs where the insurer is attempting to gain evidence. Commissioner Conway asked if the intent of the drafting note stating that this section is not intended to limit or curtail existing value-added services in the marketplace is specific to approved value-added services. Superintendent Dwyer said there was some concern from industry that things they had already talked to the Department of Insurance (DOI) about and had moved forward with would have to be brought back through that process again. Commissioner Mais said it is not intended to grandfather or exempt anything from regulation, and Superintendent Dwyer confirmed that.

Director Ramge made a motion, seconded by Commissioner Mais, to adopt the revised language with the amendment of the technical correction described by Superintendent Dwyer. Mr. Trexler said he agrees with Mr. Currier regarding the 21-day language, and he prefers the previous language to the current draft. He asked if this would be an appropriate time to propose that revision to the language. Commissioner Godfread said there is a motion on the floor to adopt the language as presented and the motion would have to be withdrawn to discuss that further. Director Ramge said he would like to move forward with the motion on the floor, and Commissioner Godfread called the vote. CA, HI, ID and NJ abstained. Nevada opposed the motion. The motion passed.

4. Heard Updates from the Accelerated Underwriting (A) Working Group, the Casualty Actuarial and Statistical (C) Task Force, and the Privacy Protections (D) Working Group

Commissioner Godfread said, consistent with the efforts of the Task Force to coordinate and ensure collaboration with other workstreams being carried out by Working Groups and Task Forces under other Committees, reports from the Accelerated Underwriting (A) Working Group, the Casualty Actuarial and Statistical (C) Task Force and the Privacy Protections (D) Working Group will be provided.

a. Accelerated Underwriting (A) Working Group

Director Muriel said the Accelerating Underwriting (A) Working Group met Nov. 17 and heard updates from its Ad Hoc subgroups. He said the Ad Hoc Drafting Subgroup continues to monitor the activities of other groups. He said the group is drafting an educational report that will include recommendations for state insurance regulators, but it will not be a model law at this time. He said a draft outline will be shared, and comments may be sent to NAIC staff. He said the plan is to release portions for formal comment as they are drafted.

b. Casualty Actuarial and Statistical (C) Task Force

Mr. Piazza said the Casualty Actuarial and Statistical (C) Task Force completed the Regulatory Review of Predictive Models white paper. He said the charge originated from the Big Data (EX) Working Group. He said the charge was to draft changes to the Product Filing Review Handbook on reviewing predictive models filed by insurers to justify rates and provide guidance based on reviewing complex predictive models. He said more than 10 state actuaries contributed to the drafting of the paper. He said it was exposed many times for public comment and adopted by the Task Force in September 2019. He said by way of providing a brief background for the white paper, models are complicated and are getting more statistically advanced and
challenging to review and keep up with. He said state insurance regulators want to know if the modeling techniques used for rate filings are compliant with state laws and regulations. He said the Product Filing Review Handbook is not in the law; however, it is still an important and great educational tool for state insurance regulators. He said the second charge to the Task Force was to provide guidance on the review of complex models and what specific knowledge a state insurance regulator should have to review these filings. He said the Task Force took a deep dive into generalized linear models (GLMs) in private passenger auto and homeowners, prioritized each element in the review process, and provided guidance to assist the state insurance regulator in reviewing a GLM. He said it was organized into three general areas, including how the model input was selected, how the model was built, and how the final model was included in the rating plan and was implemented. Mr. Piazza said the Task Force did not address everything in the white paper, as some things were considered outside of the scope of the charge, including identification of the disparate impact and proxy variables as used in models, the matter of causality versus correlation and confidential treatment of model responses, as nothing changes the requirement to abide by state confidentiality laws and regulations. He said the Task Force did receive criticism for this being too prescriptive and burdensome to industry, but it did not agree with that point. Even so, he said language was added to clarify that this is instructional guidance only, and it has no direct impact on any state unless they choose to use the guidance and maintain confidentiality consistent with their laws and regulations. He said the white paper will be taken up by its parent, the Property and Casualty Insurance (C) Committee, at this meeting.

c. Privacy Protections (D) Working Group

Ms. Amann said the Privacy Protections (D) Working Group received an update from NAIC staff on federal and state privacy legislation, either pending or proposed, and discussed next steps regarding a gap analysis using the Privacy of Consumer Financial and Health Information Regulation (#672) as a baseline. She said the Working Group is not focused on the NAIC Insurance Information and Privacy Protection Model Act (#670) at this time, and it has recognized that there is a lot of information in other privacy legislation that the Working Group is trying to fold into current draft analysis. She said it is slow with the COVID-19 interruptions, but the Working Group is making progress and is initially focused on gap analysis in three areas—consumer issues, business or industry issues, and regulatory issues—recognizing that there is interplay between all three of them. She said the Working Group is discussing four areas of gap analysis related to consumer issues, including notifications, portability, opt-ins and opt-outs, and disclosures. She said the Working Group recognizes that it has a great deal of interaction with other working group workstreams, and coordination is important.

5. Received an Update on Cybersecurity Workstreams

Commissioner Godfread said the next agenda item speaks to the Task Force’s role or job to serve as a coordinating body for workstreams related to cybersecurity (Attachment Three). He said the matrix provided shows eleven different workstreams, including three involving international counterparts. He highlighted a few areas of recent activity, including:

- The Insurance Data Security Model Law (#668) has been adopted by 11 states who have either already implemented it or are in the process of doing so, and given that there is a five-year window provided for its adoption by the states, this continues to be a priority and will be in 2021.
- Tools associated with the Financial Condition Examiners Handbook (Handbook) were again updated to enhance cybersecurity guidance, including a new tool that maps market conduct guidance to the Handbook guidance.
- While cybersecurity tabletop exercises experienced a bit of a slowdown as a result of COVID-19, Illinois still remains on the list to host one in May 2021, and the Center for Insurance Policy and Research (CIPR) has developed an insurer cybersecurity preparedness survey that it plans to implement in 2021 in conjunction with tabletop exercises.
- Regarding the cybersecurity insurance market, the Property and Casualty Insurance (C) Committee is taking a charge to work on that, and the CIPR and NAIC staff have already established a program to further this work based on previous events and workstreams.
- The Property and Casualty Insurance (C) Committee will also oversee the cybersecurity supplement report.
- The NAIC will continue to stay diligent in terms of internal cybersecurity, data security, privacy, and the matrix reports on that activity as well.

6. Received an Update on NCOIL’s Insurance Modernization Activities

State Representative Matt Lehman (R-IN), the current National Council of Insurance Legislators (NCOIL) President, said when he spoke to the Task Force last year, he talked about the industry being ripe for some modernization. He said NCOIL worked on cleaning up language to clear obstacles, and a prime example is in the area of the paper trail, allowing consumers the option of getting electronic notices from insurers. He said NCOIL made it a priority in 2019 to develop insurance modernization legislation. He said it decided, as opposed to trying to develop some type of big omnibus bill, to take the rifle shot approach or
develop bills one at a time. Representative Lehman said NCOIL, after discussing it internally, came up with three areas that were the most pressing to address: 1) allowing consumers to opt-in to electronic information and notices; 2) modernizing the current paper process used to transfer title ownership of a total loss vehicle from an insured to the insurer; and 3) modernizing the anti-rebating laws. He said NCOIL was able to work on all of those last year, and it adopted those model laws at its spring meeting last March. He said with the pandemic, insurers found themselves in the center of that storm, and carriers had to go entirely remote and make many other changes. He said overall, the industry weathered it very well, but it did expose some gaps and vulnerabilities and identify some places that need work; so NCOIL decided that its modernization efforts should be rebooted. He said one area is remote notarization, and he noted that many states allowed this during the pandemic and found that it can allow for greater efficiency without sacrificing security and promote customer satisfaction. He said the second is in the area of producer licensing, allowing continuing education (CE) to be done remotely. He said that should be made permanent, as doing so presents significant cost savings and enables more convenient and timely access for producers. He said in the health area related to telemedicine modernization, making sure consumers can receive the care they need without delay is also a focus. He said he can see where there might be some issues on the health side.

Commissioner Godfread asked if Representative Lehman had run into any issues with current federal laws related to disclosure and release of policy information to consumers. He said his DOI had done some research and did run into some federal law issues. Representative Lehman said he had not. Commissioner Godfread said it was more on the health side. Representative Lehman said he is a property/casualty (P/C) agent, and electronic provision of information has been really embraced there, but he can see where there might be some issues on the health side.

Commissioner Richardson said Nevada has embraced all of this in general, but it has struggled with how telephones are treated as part of the telemedicine solution, and she asked if that was something NCOIL had investigated. Representative Lehman said it has been a discussion item, and all mediums that convey data, particularly devices like iPads, iPhones and computers, are included, but it is a valid point to define all forms of communication.

7. Discussed RFIs Related to Continuing Specific “Regulatory Relief” or “Regulatory Accommodations” Offered by States Related to the COVID-19 Pandemic

Commissioner Godfread said this request for information (RFI) (Attachment Four) had been mentioned during the last couple of Task Force calls. He said interested parties were asked to provide information related to specific “regulatory relief” or “regulatory accommodations” offered by states as a result of the COVID-19 pandemic that they would recommend be continued or made permanent related to innovation and technology. He said the request asked if there is some type of regulatory relief or accommodation offered or if there continues to be a law, regulation, regulatory guidance or established practice in place that prohibits or limits insurers or producers from implementing or using newer technologies, data, methods or processes that are now necessary in order to continue to serve customers and maintain operations.

He said nine responses were received, and the summary includes the original request sent to interested parties and groups the responses into four categories, including which organizations offered a similar or same suggestion. He said the tables cover the following areas:

- Electronic Commerce
- Regulatory Capabilities
- Claims Facilitation
- Specific to Surplus Lines

Commissioner Godfread said while most responders did not include the specific statutes or statutory language, they recommend eliminating or revising. The American Council of Life Insurers (ACLI) did send a specific recommendation suggesting the development of a bulletin or bulletins to address concerns related to existing issues with the state by state implementation of e-signature laws, including the Uniform Electronic Transactions Act (UETA) and existing obstacles to moving e-commerce forward. Commissioner Godfread said that information is summarized at the end of this document.

Commissioner Godfread said many of the items are already implemented in some states, while others may be implemented but not in the manner proposed or not uniformly, so it may be an effort to just identify ways to address the issue in those particular states or work on something that could be implemented more uniformly. He reviewed the summary of responses by category, and he asked members of the Task Force to comment on prioritization or how best to move forward. He said this may drive a lot of the Task Force’s work for the next year in terms of how it updates and adapts to the modernization experienced during
the pandemic. Commissioner Godfread reviewed the summary document, pointing out the main theme within each category. He asked if the Task Force members have any comments. Ms. Amann said it would be helpful if NAIC staff could put together a table showing the status of these issues in each of the states across the country and the states that still need to implement certain legislation like the UETA. She said it would be helpful to survey states to see if they have restrictions in the claims payment arena and what else might be preventing them from doing more work digitally. Ms. Matthews said NAIC staff can do that, and some of the work has already been done. She said it could be a little difficult in some areas where the state has the law but may interpret it differently than others, which could be affecting uniformity, but she said NAIC staff could certainly work on that. Ms. Amann said the trade associations might be able to help as well. Commissioner Godfread agreed and asked the trade associations to contribute information related to this work, particularly related to state specific issues.

Patrick C. Reeder (ACLI) said the ACLI would be happy to work with NAIC staff to put together such a list, and it has some of that information already. He said it involves a mix of legislation and interpretation, as well as the federal overlay as mentioned earlier.

Commissioner Godfread asked the ACLI to talk about its proposal to draft a bulletin or bulletins as a solution to some of these issues. Mr. Reeder said many states have already done some things in this area. He said the proposed bulletin captures and identifies specific updates that can be made, and it draws directly from an Alaska bulletin. He said the ACLI used it as the model template and built it to make it state specific. He said it primarily addresses four areas: 1) e-signature; 2) remote examinations; 3) producer licensing remote examinations; and 4) remote online notarization.

Commissioner Godfread said the challenge will be needing to look at this on a state-by-state basis to see where these issues exist. He said a state may think that since it has passed the UETA, it is good to go, but there might be some interpretation from long ago that might not be fully expressed or explained, still creating some type of concern. He said this will drive a lot of the Task Force’s work going forward.

Superintendent Dwyer said the bulletin might be a good way to start. Commissioner Godfread agreed, and he asked Task Force members to send suggestions and thoughts to himself or Ms. Matthews in the meantime regarding prioritization and drafting a bulletin. Commissioner Richardson said with staff working remote, they are sometimes not aware of what is being allowed to be done electronically, so she asked those interested parties on the call to bring those situations to the DOI’s attention if they run into issues.

8. Discussed Other Matters

Commissioner Godfread said due to time constraints, the Task Force will defer the presentation from NAIC staff on components of a model governance framework to the next meeting of the Task Force.

Having no further business, the Innovation and Technology (EX) Task Force adjourned.
The Speed to Market (EX) Working Group of the Innovation and Technology (EX) Task Force met Nov. 10, 2020. The following Working Group members participated: Maureen Motter, Vice Chair (OH); Katie Hegland (AK); Gina Hunt (AL); William Lacy (AR); Frank Pyle (DE); Heather Droge (KS); Camille Anderson-Weddle (MO); Tammy Lohmann (MN); Kelly Smith (NC); Chris Aufenthie and Chrystal Bartuska (ND); Russell Toal (NM); Cuc Nguyen (OK); Mark Worman (TX); Tanji J. Northrup (UT); Bob Grissom (VA); Gail Jones and Lichiou Lee (WA); and Barry Haney (WI). Also participating were: George Bradner (CT); and Donna Stewart (WY).

1. **Adopted its Sept. 29 Minutes**

The Working Group met Sept. 29 and took the following action: 1) adopted its Aug. 27 minutes; 2) discussed possible discontinuation of the Product Requirements Locator (PRL); and 3) discussed communication plans for speed to market tools.

Ms. Northrup made a motion, seconded by Ms. Lohman, to adopt the Working Group’s Sept. 29 minutes (Attachment One-A). The motion passed unanimously.

2. **Considered Discontinuation of the PRL**

Ms. Motter noted that there was some good discussion on the PRL during the Sept. 29 Working Group meeting. She advised the discussion was about use of the PRL and explained it was only adopted on the property/casualty (P/C) side and populated many years ago by about 26 or 27 states. There is a question about whether the states that populated the PRL are keeping it updated or if they have found other methods to share their review requirements with the industry, and that by continuing to display that information in the PRL, they may be sharing incorrect information. There were states that shared they continue to populate the PRL or intend to have it up to date but have struggled with resources. In response to that discussion, a draft survey was created and shared with Working Group members and posted on the Working Group web page for review. Ms. Motter noted the survey will only be sent to the states that have populated the PRL, but before it is generated, feedback is being requested. The intent is to understand the state of the information that is currently out there in the PRL.

Joe Bieniek (JFB Associates Regulatory Compliance LLC) suggested that on the questions populated if “yes” is the response, adding the following question: Would you find it helpful if the general requirements tab added a statement and hyperlink to the PRL, for something like: “additional requirements for filings by product type may be found by using the product requirements located here,” and then placing that information there. Bridget Kieras (NAIC) stated that something like what Mr. Bieniek has suggested be placed on the filing itself, perhaps on the submission requirements tab. Ms. Motter asked if it should be on the state page where there are categories and sections that are pre-filled. Ms. Kieras advised that would be the general instructions and noted it could be there but suggested it also be on the filings.

Theresa Boyce (Chubb Group) believes it would be more beneficial on the general instruction page. She explained that sometimes when they are preparing a filing for a new product, it would be nice to go somewhere where you do not have to create a filing. She noted that having it on the filing itself requires users to set up a filing when they may not be ready to do that. She explained when users go to the filing rules tab, that has all the links for each state to the general instructions. Ms. Boyce said she believes it would be easier to get to the information directly on the general instruction page without having to set up a filing. Ms. Motter advised this was discussed but explained adding this as a field in the general instructions would slow down the process. Ms. Kieras noted that you also would not want it to show for the states that are not using the PRL and explained it might be best to first find out if states still find the PRL tool valuable and then determine how to get users to use it if they do. Ms. Motter noted that one of the other things discussed was not just gathering information specific to the PRL, but also gathering information outside of the System for Electronic Rate and Form Filing (SERFF) that is a resource. She advised that Ohio has a review standards checklist by type of insurance (TOI) on their website, so anything that could be provided as a link showing additional information to assist users with making a good filing would be helpful. Ms. Boyce noted that she has seen that in some states, but that the link is not always direct and is also not clear enough. She stated many times the link just takes users to the state’s website, and then they must search for the needed information. Ms. Boyce noted that if a link is to be provided, it would be helpful if it takes users to exactly where the information needed is located instead of a general website, which is not as beneficial.
Ms. Motter asked if there was a desire to add Mr. Bieniek’s suggested question to the draft survey or to wait and handle the question for links within the general instructions until it is decided if the PRL will be a source in the future, as that question may not end up being PRL-specific as there may be links to websites or other resources.

Mr. Bradner asked how future modifications to SERFF that are currently being looked at from a request for proposal (RFP) perspective may address some of the questions in the draft survey. He said he believes some of the information regarding the PRL could be addressed with the modernization of SERFF. Ms Motter advised she believes some of this has probably been built into SERFF on submission requirements in certain places. She said she believes SERFF enhancements will address some of the concerns being discussed here. Ms. Kieras noted that the SERFF modernization project could have a substantial impact on this. She noted she did not imagine when the SERFF modernization project was complete that there would still be this separate application users would be accessing to get the information they need. Ms. Kieras noted that one of the things to consider is if users find value in the PRL, determining what that value is and what pieces of that can be incorporated into the SERFF modernization efforts. Ms. Motter noted that she believes the survey will be helpful in identifying the states that have let the PRL become outdated and then assist the states that do have updated information and determine the best way to share that until the SERFF modernization project is complete. She agreed that it would be good to determine the information that is in the PRL that should be incorporated into the SERFF modernization project.

Ms. Motter noted that since the SERFF modernization project is ongoing, for now the best approach may be for states to share what outside resources are currently being used, whether it be the PRL or specific state website addresses to help with better filings. Mr. Bradner noted that Connecticut extensively uses the PRL and that the only frustration is that companies must look at it. He noted that by building out business rules with the SERFF modernization project, he believes it will assist companies as they are doing a filing with the state because it will let them know what the requirements are and find issues that could be there. Ms. Boyce noted that Chubb Group does a significant number of filings each year and that she is familiar is with the PRL as the filing manager. She stated one of the frustrations is that many states do not keep the PRL updated, and she finds that her staff and her product team do not use it as a result. She said she believes in general this may be why companies are not utilizing the PRL. Ms. Motter suggested that the initial steps be generating the survey to the states that populate the PRL and deleting any outdated information. Then, while the SERFF modernization project is underway, the Working Group can identify a solution to assist people with locating the resources that are current and up to date, which would also include gathering information from the states that will not be included in the PRL survey. She noted one idea is including information in the general instructions such as a link to the PRL, a link to the state’s review standards checklist or the state’s website information.

Mr. Bradner agreed with these suggestions. Ms. Motter advised the survey will be sent to the 26 to 27 states that populate the PRL, and then future discussions will take place for next steps.

3. Discussed Phase One of the Communication Plan for Speed to Market Tools

Ms. Motter advised one of the Working Group’s charges is to work on a communication plan to discuss the various speed to market tools and make sure relevant parties are aware of the tools, know how to use the tools and know how to make changes to them. One of the initial communication plans discussed was sending out messages in SERF with respect to the product coding matrix (PCM). Ms. Motter said she has started drafting the message and is working with Mr. Bieniek and Trish Todd (VA) on this. The draft message will be discussed during a future Working Group meeting. Ms. Motter noted there was a little bit of change to the PCM that will be effective Jan. 1, 2021. She reminded everyone they can submit suggested changes to the PCM at any time.

4. Discussed Other Matters

Mr. Bradner noted a private flood product is being brought to Connecticut. The first filing will be an overall stand-alone flood program. Then the next thing mentioned was having a product that can be endorsed to the homeowners policy as they are surveying companies and there may be more of a desire to do it that way than having a stand-alone policy. He stated he is aware of a flood TOI, flood personal and flood commercial. He said he wonders if it would make sense to have a homeowners TOI and then a sub TOI for flood so that it is captured if a company does that and it can be tracked. Ms. Motter noted that if a flood endorsement is added, it would be an endorsement to a homeowners policy, so the recommendation would be to submit as a homeowners because it is just one of many endorsements attached to a homeowners policy. To help identify the filing, state insurance regulators can utilize state filing descriptions, filing labels or state TOIs, so that if the filing has flood in it, there are ways to highlight, search and locate those filings. Mr. Bradner noted concern about capturing information on private flood premiums from a financial perspective when more companies start to go that route. He stated those private flood premiums would just be hidden within homeowner premiums. Ms. Motter noted that this concern appears to be not only related to how to file, but how to report premiums and losses, which would be a matter for the Market Conduct Annual Statement Blanks (D)
Working Group to review. Mr. Bradner noted that maybe with the SERFF modernization project, endorsements can be more easily tracked. Ms. Motter noted that one thing that is nice about the filing labels is that they can be searched; one of the goals in the future is to be able to export them. She advised multiple labels can be placed on a filing.

Ms. Motter noted that the next Working Group meeting will be scheduled after the Fall National Meeting and that survey results should be available to be discussed at that time.

Having no further business, the Speed to Market (EX) Working Group adjourned.
The Speed to Market (EX) Working Group of the Innovation and Technology (EX) Task Force met via conference call Sept. 29, 2020. The following Working Group members participated: Rebecca Nichols, Chair (VA); Maureen Motter, Vice Chair (OH); Katie Hegland (AK); Shirley Taylor (CO); Heather Droge (KS); Tammy Lohmann (MN); Ted Hamby (NC); Jon Godfread represented by Chris Aufenthie (ND); Glen Mulready (OK); Sharalyn Taylor and Mark Worman (TX); Tanji Northrup represented by Tracy Klausmeier (UT); Gail Jones and Lichiou Lee (WA); and Barry Haney (WI). Also participating were: Chris Wright (OH); Bob Grissom and Trish Todd (VA); and Donna Stewart (WY).

1. **Adopted its Aug. 27 Minutes**

The Working Group met Aug. 27 and took the following action: 1) discussed its priorities and charges for the remainder of 2020; and 2) discussed parameters and output fields for the System for Electronic Rate and Form Filing (SERFF) Canned Report for Rate Changes.

Mr. Hamby made a motion, seconded by Ms. Motter, to adopt the Working Group’s Aug. 27 minutes (Attachment One-A1). The motion passed unanimously.

2. **Considered Discontinuation of the PRL**

Ms. Nichols noted that the Product Requirements Locator (PRL) tool was designed to generate reports showing regulatory requirements by state for specific product types. To use the PRL, the states needed to add their regulatory requirements into the tool. The PRL has not been utilized as widely as expected or as hoped. At a review last week for the property and casualty lines, 27 states had entered their requirements, two states had entered requirements for life products/lines, and one state had entered requirements for health products/lines. Ms. Nichols noted that the process for entering and editing information into the PRL is not easy, which may explain why more states are not using the tool. This may also be why the tool has not had updates in several years. There is concern that the PRL tool may be out of date. Ms. Nichols noted that the Working Group needs to decide if the tool should be discontinued, and she explained that the information currently in the tool can be extracted so states would not lose any of that information if it were decided that the tool be discontinued. She asked for comments on this topic.

Ms. Lohmann noted that Minnesota is currently using the tool, and it has spent a lot of time on it and has had some difficulty updating it. She agreed that it is a difficult tool, but she stated that Minnesota would need a lot of advance notice if it were to be discontinued and suggestions on how to roll over the information to something else more effective. She noted that Minnesota is reliant on SERFF and NAIC resources to house this information.

Joe Bieniek (JFB Associates Regulatory Compliance LLC) provided his background, which included being a company filer and NAIC staff member. He noted that he was part of the group that assisted in helping state insurance regulators build the filing requirements into the PRL. The purpose of it is to provide the industry with the requirements necessary to make filings that meet state requirements. It was built by state insurance regulators who know their requirements well and better than any portions of the PRL that can be purchased commercially. The information, when kept up to date, is 100% accurate. Mr. Bieniek noted that the Product Filing Review Handbook indicates that with other tools for state insurance regulators, the checklists and PRL provide a common format for display of the statutory and regulatory filing requirements in a manner that is useful to industry filers; the checklists and PRL help contract review analysts to organize the filing review; and the checklists and PRL are effective when they are drafted in clear language that tells the filer what the state insurance regulator expects to find in a compliant filing.

Mr. Bieniek noted that he understands that the PRL has not been kept up to date; some of the hyperlinks to laws have changed; and the industry has not been using it widely, as they either did not know the PRL was available or they ignored it. He also stated that new state insurance regulators may not be informed about the PRL. He believes the current database is structurally sound, has assisted industry, and benefited state insurance regulators. He suggested concentrating on property and casualty, but first updating the requirements, in order to strengthen the PRL. This could be done by having state insurance regulators in each jurisdiction assign one to two people to devote one to two hours per person, per week until complete. NAIC staff can assist state insurance regulators in building the requirements, as was done in the past. Regarding broken hyperlinks, there are
commercially available programs at a low cost that the NAIC can periodically run to find the broken links, and they can get in touch with the state or perform the research themselves to determine what the current hyperlinks are. Mr. Bieniek noted that with social media in wide use, state insurance regulators and the NAIC can push on the various platforms; and the chair of the Working Group could be featured in one of the NAIC “The Regulators” podcast episodes. He also suggested considering expanding one of the filer-required templates to ask what sources the company used to be certain that the submitted filing meets the requirements. In this fashion, several resources are listed, including the various NAIC items and the PRL.

Ms. Nichols asked if there are any metrics as to how often this tool is used by industry. Brandy Woltkamp (NAIC) noted that there was never an analytic tool for that put in place for PRL. She noted that the NAIC receives very few questions on the PRL tool. Ms. Motter noted that the survey done a couple of years ago asked what tools were being used to bring products into compliance, and the results indicated that the PRL was one of the least used resources and did not appear to be a tool that was heavy relied on.

Theresa Boyce (ACE Group) stated that as an industry Filing Manager, she can relate to some of the statements made by Mr. Bieniek and Ms. Motter. She noted that when the tool was created, she thought it was a good idea to have everything in one place, and she has followed the tool since it started. She was not surprised to hear that the survey indicated that the PRL was not being used as much, because industry must rely on other tools due to all states not utilizing the PRL. She noted that it is sometimes hard to find where each state’s requirements are, and she thinks the PRL has the potential to be a really good tool because the information comes directly from the states.

Ms. Motter noted that it may be helpful to find out where each of the states have their information up to date and try to create a place within the NAIC website where users could click on that state and be taken to where that state is keeping its information. Ms. Todd noted that year-to-date, Virginia has only had 10 views of the PRL off its website. Ms. Nichols noted that an option Virginia has been considering, which it has started, is downloading all its requirements and creating a Microsoft Excel workbook that it intends to post to its website, as it is easier for it to maintain since Microsoft Excel is more nimble. This also gave Virginia a lot of flexibility with category names and search options. Ms. Nichols noted that Virginia is not sufficiently staffed to update the PRL in its current form, as it is too tedious.

Ms. Motter noted that the survey indicated that users were looking for what the specific state requirements were when they went to submit filings for a state. She suggested a link on the NAIC website that shows users what each state’s requirements are. She explained that this may be helpful, as there would be one location to search for that information versus going to each state’s website. Ms. Nichols noted that it appears that this issue needs to be tabled for now. Ms. Motter suggested starting with finding out where Working Group member states have their up to date requirements, checklists, or things given as resources to people doing filings. Ms. Nichols agreed that this would be a good place to start, and she noted that this would open another opportunity for dialogue on this topic.

Ms. Stewart asked if most states attach their rate and form filing requirement checklist on the SERFF general information page. Ms. Boyce noted that they do not, and Ms. Woltkamp confirmed the same. Ms. Motter asked if a field could be added where states could let filers know where review standards are located or where a link to state insurance departments could be placed for every state. Ms. Woltkamp noted that there is an ability for states to add hyperlinks into the general instructions that could be added to that section today. Ms. Motter noted that there could be a communication provided encouraging states to provide a hyperlink to their statutory references, checklists, or whatever information exists with their review standards. Ms. Woltkamp noted that this would be her suggestion as far as the quickest solution. She noted that in the general information section, there is an “additional information” link under the “change of effective date request.” On the Interstate Insurance Product Regulation Commission’s (Compact’s) general instructions page, that is exactly where they have their uniform standards listed. Ms. Todd noted that in Virginia’s general instructions, it has the PRL linked to the Virginia website; and in SERFF, it also has a question asking the filer if they have read the general instructions. Ms. Nichols noted that the Working Group has some things to consider, such as a communication encouraging regulated entities to have that link added to their SERFF general instructions. She suggested that this topic be tabled for now and that a proposal be created for the Working Group to consider during its next call.

3. **Discussed Communication Plans for Speed to Market Tools**

Ms. Motter noted that one of the Working Group’s charges is related to familiarity with the tools and updating the tools. She stated that the survey previously discussed also showed that many filers, both state insurance regulator and industry, are not familiar with other tools and resources available to assist in the speed to market process. As a charge of communicating information about these tools and making people more knowledgeable about them, as well as how changes to the tools occur,
one idea is to utilize the SERFF system and send out alerts. Depending on the subject, it may make more sense to say something a little different in the message to the state insurance regulator versus the message to the industry. It could be a monthly alert featuring a specific tool rather than combining them all at one time. For example, since people will soon prepare for the recent changes to the Product Coding Matrix (PCM), which takes effect Jan. 1, 2021, it could be an opportunity to make people aware of the tool and what types of insurance (TOIs) exist, as not all states use the same TOIs. Ms. Motter also wants to ensure that everyone is aware that suggested changes can be made every year, not only to the PCM, but also to the Uniform Transmittal Document. Making any needed changes is an ongoing charge every year.

Another tool that will soon be updated is the Product Filing Review Handbook. It is a resource for the state insurance regulators to use for training purposes for their staff, in addition to their own materials, regulations, laws, etc. The Casualty Actuarial Society (CAS) Task Force is working on a chapter with respect to modeling, and that will be added to the handbook when it is complete. Ms. Motter noted that she could do the drafting, and she asked for feedback on this communication plan and any suggestions. She also asked for any volunteers that would like to assist with these tool communications. Mr. Bieniek and Ms. Todd noted that they would be happy to help. Ms. Motter noted that the other tool identified that people may need more familiarity with is the Compendium of State Laws on Insurance Topics, and the solution for the PRL could also be a topic. She stated that she will start working with her team on these items.

Having no further business, the Speed to Market (EX) Working Group adjourned.
The Speed to Market (EX) Working Group of the Innovation and Technology (EX) Task Force met via conference call August 27, 2020. The following Working Group members participated: Rebecca Nichols, Chair (VA); Maureen Motter, Vice Chair (OH); Katie Hegland (AK); William Lacy (AR); Shirley Taylor (CO); Emily Beets (KS); Tammy Lohmann (MN); Camille Anderson-Weddle (MO); Ted Hamby (NC); Chrystal Bartuska (ND); Cuc Nguyen (OK); Brian Fordham (OR); Mark Worman (TX); Gail Jones and Lichiou Lee (WA); and Barry Haney (WI). Also participating were: Bob Grissom and Trish Todd (VA); and Donna Stewart (WY).

1. **Discussed Working Group Priorities and Charges for the Remainder of 2020**

Ms. Nichols said that based on the 2019 survey responses, it seems there should be some future discussion on the tools and products available to state insurance regulators. The products that will be discussed during a separate Working Group conference call are: 1) the System for Electronic Rate and Form Filing (SERFF); 2) the Product Coding Matrix (PCM); 3) the Compendium of State Laws on Insurance Topics; SERFF reports; 4) the *Product Filing Review Handbook*; and 5) the Product Requirements Locator (PRL). There will be discussion on which tools state insurance regulators find useful and should be a continued focus, how to make sure understanding these tools would be best communicated, and if any of them should be forfeited or retired.

2. **Discussed Parameters and Output Fields for the SERFF Canned Report for Rate Changes**

Ms. Woltkamp said that the Canned Report will be placed in the state reports tab within the SERFF application. One of the first things that needs to be decided is the name of the report to be placed on this page. Ms. Motter suggested the report be titled *Rate Change History*. The description below the report will give a brief explanation of the report. Ms. Woltkamp reviewed and explained the parameters within the current SERFF State Turnaround Report for reference. Ms. Motter asked what date parameters would be of interest for rate change history. She explained it could be set up so that calendar dates could be selected, and a radio button could be included to choose if state insurance regulators were looking at dates of when filings were submitted to the state or a date range for when the filings were effective. This would be based off the information on the general information screen, which means a file would not have to be closed to appear in the output. Another thought was that state insurance regulators may want to see a date range off the disposition effective dates or the disposition date. Ms. Lee said it looks like the implementation date or effective date would be most appropriate because if state insurance regulators want to find out about the effective date for various filings and an average rate change, that seems like the best way. She asked about options available to choose dates. Ms. Woltkamp said it can be set up to change from requested effective date to the approved effective date based on the disposition as one of the selections to search with.

Ms. Motter asked if anyone would want to pull rate change data based on a time frame of when filing submissions were submitted. Ms. Lohmann said Minnesota uses submission dates. There was no interest expressed in having data pulled based off the disposal date. Ms. Motter said in regards to effective dates, it appears state insurance regulators would want both the requested dates and what is on the disposition so that the rate change history for filings that were still pending could be reviewed, in addition to the filings that are closed. Ms. Lee agreed with that comment. Ms. Motter said it sounds like the proposal for options via radio buttons is to put in a date range for all current date fields with exception of the disposition date.

Ms. Motter asked if there is any interest in selecting filings or narrowing and filtering down by the primary reviewer. In the SERFF State Turnaround report, primary reviewer is one the parameters. Ms. Todd advised she would find it useful to search by analyst. Ms. Motter asked if it would be useful to expand the search to any reviewer as opposed to just a primary reviewer. Ms. Nguyen and Ms. Todd said they would find that functionality useful. Ms. Woltkamp asked if the report has primary reviewer and secondary/other reviewers on the filing in the output file, would it still be as important to have that as a filling parameter to run the report if you could narrow the results in Excel and do the analysis from the actual output file. Ms. Todd said they could use the Excel spreadsheet to narrow it down. After further discussion among Working Group members, the decision was made to have reviewers as an output, but not as a parameter.
Ms. Woltkamp said another parameter in the SERFF State Turnaround Report is business types. Every state report has three types for Life, Health and Property & Casualty. She asked if there was an interest in having these business types as parameters. Ms. Jones expressed support for those options. Ms. Motter said the last parameter in the SERFF State Report is the option for report format of portable document format (PDF) or comma-separated values (CSV) file. It does not appear the PDF file will be an option for this new report because of the large amount of data that will be provided, so for now the data will be provided in CSV format in Excel so the data can be filtered as needed. If it seems everyone is using certain columns a lot, then this issue will be discussed and changed in the future.

Ms. Woltkamp said another parameter to consider is narrowing rate change history information based on filing types. Ms. Nguyen and Ms. Lee expressed interest in this parameter. Ms. Woltkamp said it would be a field where multiple filing types could be selected, like the primary reviewer options in the SERFF State Turnaround Report. Ms. Lee asked if the business type options would be choices by type of insurance (TOI) or by sub TOI. Ms. Woltkamp said it could be either. Ms. Lee asked if both TOI and sub TOI could be choices. Ms. Woltkamp said she is envisioning something like the search and export tab where a TOI can be selected and then narrowed down to sub TOIs.

Ms. Stewart asked if there was interest in having a specific insurance company as a field. Ms. Motter said the company name and NAIC number will be in the output fields so this data would be available. Mr. Grissom expressed interest in having the option to search for an NAIC number.

The output fields were discussed next. The first several output fields that will be provided are: company name, CoCode, state of domicile, filing type, date submitted, SERFF tracking number, state tracking number, primary reviewer, other reviewer, TOI and sub TOI. The first output field related to date will be for effective/implementation date request new, which will come from the general information screen. The next field related to date will be the disposition date, so if pending filings were being reviewed, this field would be blank. The next output field that will be provided is disposition status.

Ms. Motter said she does not think an output field for filing method is important and asked for input in case other states would need this column when they are doing the rate change history. Ms. Lee asked if the filing method was pulled from the general information area. Ms. Woltkamp said the filing method is on the rate/rule tab, which is provided by the company, so the company advises whether it is prior approval or file and use. Ms. Lee suggested removing this column because sometimes the company puts incorrect information in for this field. Ms. Motter said one would know based on their TOI which companies are file and use or prior approval, so this column was removed.

The next field that Ms. Motter wanted feedback on was for rate change type. This is also a field that companies complete. She said based on the percentage amounts, a conclusion could likely be made about whether there was an increase or decrease. Ms. Lee said she does not think this column is necessary. Ms. Motter said the rate change type column would also be removed. The next several fields discussed and reviewed reflect data from the rate and rule schedule tab (maximum change, minimum change, overall percentage indicated change, overall percentage rate impact, premium rate change, written premium for this program and last overall percentage), followed by the similar data that appears on the disposition tab (disposition maximum change, disposition minimum change, disposition overall percentage indicated change, disposition overall percentage rate impact, disposition premium and disposition premium rate change), with the only thing between those columns being the column for disposition effective/implementation date. Ms. Motter said this would allow state insurance regulators to see all information provided by the company. Ms. Motter asked if the ability to see state rate data could be added, and Ms. Woltkamp confirmed a column for state rate data could be added. Ms. Lee asked if it would be possible to add a column for the number of policyholders affected and said that on the rate and rule schedule for the health side, there is a field for number of policyholders affected for this program. Ms. Nguyen said she is also interested in this field. Ms. Motter said policy counts will also be included.

Ms. Motter asked if there were any other fields that people are interested in seeing on this report proposal that have not already been discussed. No additional fields were mentioned. She also asked if the column orders worked for everyone, and there were no comments on this matter.

Regarding the output file, Ms. Woltkamp asked if a parameter was selected for filing type and the option for rate was selected, but there was no rating information on that filing, would people still want to see the fields for overall percentage indicated change and over return, or would people prefer those fields not return. Ms. Motter said she would like to see the return in case she wanted to see why there was no rating information showing up. Ms. Nguyen agreed.
Ms. Motter asked what people would like the name of this report to be and suggested Rate Change History Report or Rate Change Report. Ms. Nguyen and Ms. Taylor supported the title of Rate Change Report. Ms. Motter suggested the description be: “The Rate Change Report displays rate data at the state instant level for filings during the specified date range.” Ms. Nguyen and Ms. Taylor agreed with that suggestion. Ms. Motter again asked for any other comments and suggestions, and there were none proposed.

3. Discussed Other Matters

Ms. Taylor asked when the rate report would be available for use, and Ms. Woltkamp said it would be ready early next year. Ms. Nichols said the next Working Group meeting will take place on Tuesday, Sept. 29 at 2:00 p.m. CST.

Having no further business, the Speed to Market (EX) Working Group adjourned.
Section 4. Unfair Trade Practices Defined

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

A. Misrepresentations and False Advertising of Insurance Policies. Making, issuing, circulating, or causing to be made, issued or circulated, any estimate, illustration, circular or statement, sales presentation, omission or comparison that:

(1) Misrepresents the benefits, advantages, conditions or terms of any policy; or

(2) Misrepresents the dividends or share of the surplus to be received on any policy; or

(3) Makes a false or misleading statement as to the dividends or share of surplus previously paid on any policy; or

(4) Is misleading or is a misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates; or

(5) Uses any name or title of any policy or class of policies misrepresenting the true nature thereof; or

(6) Is a misrepresentation, including any intentional misquote of premium rate, for the purpose of inducing or tending to induce the purchase, lapse, forfeiture, exchange, conversion or surrender of any policy; or

(7) Is a misrepresentation for the purpose of effecting a pledge or assignment of or effecting a loan against any policy; or

(8) Misrepresents any policy as being shares of stock.
B. False Information and Advertising Generally. Making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any insurer in the conduct of its insurance business, which is untrue, deceptive or misleading.

C. Defamation. Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting or encouraging the making, publishing, disseminating or circulating of any oral or written statement or any pamphlet, circular, article or literature which is false, or maliciously critical of or derogatory to the financial condition of any insurer, and which is calculated to injure such insurer.

D. Boycott, Coercion and Intimidation. Entering into any agreement to commit, or by any concerted action committing any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance.

E. False Statements and Entries.

(1) Knowingly filing with any supervisory or other public official, or knowingly making, publishing, disseminating, circulating or delivering to any person, or placing before the public, or knowingly causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false material statement of fact as to the financial condition of an insurer.

(2) Knowingly making any false entry of a material fact in any book, report or statement of any insurer or knowingly omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report or statement of such insurer, or knowingly making any false material statement to any insurance department official.

F. Stock Operations and Advisory Board Contracts. Issuing or delivering or permitting agents, officers or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to purchase insurance.

G. Unfair Discrimination.

(1) Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any life insurance policy or annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such policy.

(2) Making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees or rates charged for any accident or health insurance policy or in the benefits payable thereunder, or in any of the terms or conditions of such policy, or in any other manner.

Drafting Note: In the event that unfair discrimination in connection with accident and health coverage is treated in other statutes, this paragraph should be omitted.

(3) Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazard by refusing to insure, refusing to renew, canceling or limiting the amount of insurance coverage on a property or casualty risk solely because of the geographic location of the risk, unless such action is the result of the application of sound underwriting and actuarial principles related to actual or reasonably anticipated loss experience.
Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to insure, refusing to renew, canceling or limiting the amount of insurance coverage on the residential property risk, or the personal property contained therein, solely because of the age of the residential property.

Refusing to insure, refusing to continue to insure, or limiting the amount of coverage available to an individual because of the sex, marital status, race, religion or national origin of the individual; however, nothing in this subsection shall prohibit an insurer from taking marital status into account for the purpose of defining persons eligible for dependent benefits. Nothing in this section shall prohibit or limit the operation of fraternal benefit societies.

To terminate, or to modify coverage or to refuse to issue or refuse to renew any property or casualty policy solely because the applicant or insured or any employee of either is mentally or physically impaired; provided that this subsection shall not apply to accident and health insurance sold by a casualty insurer and, provided further, that this subsection shall not be interpreted to modify any other provision of law relating to the termination, modification, issuance or renewal of any insurance policy or contract.

Refusing to insure solely because another insurer has refused to write a policy, or has cancelled or has refused to renew an existing policy in which that person was the named insured. Nothing herein contained shall prevent the termination of an excess insurance policy on account of the failure of the insured to maintain any required underlying insurance.

Violation of the state’s rescission laws at [insert reference to appropriate code section].

Drafting Note: A state may wish to include this section if it has existing state laws covering rescission and to insert a reference to a particular code section.

H. Rebates.

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 company or other corporation, association or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the policy.

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;
Attachment Two
Innovation and Technology (EX) Task Force
12/4/20

Unfair Trade Practices Act

(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


(e) 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 cost when such products or services are not referenced in the policy of insurance if the product or service:

(i) Relates to the insurance coverage; and

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

(I) Provide loss mitigation or loss control;

(II) Reduce claim costs or claim settlement costs;

(III) Provide education about liability risks or risk of loss to persons or property;

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

(V) Enhance health;

(VI) Enhance financial wellness through items such as education or financial planning services;

(VII) Provide post-loss services;

(VIII) Incent behavioral changes to improve the health or reduce the risk of death or disability of a customer (defined for purposes of this subsection as policyholder, potential policyholder, certificate holder, potential certificate holder, insured, potential insured or applicant); or

(IX) Assist in the administration of the employee or retiree benefit insurance coverage.

(iii) The cost to the insurer or producer offering the product or service to any given customer must be reasonable in comparison to that customer’s premiums or insurance coverage for the policy class.

(iii) If the insurer or producer is providing the product or service offered, the insurer or producer must ensure that the customer is provided with contact information to assist the customer with questions regarding the product or service.
The commissioner may adopt regulations when implementing the permitted practices set forth in this statute, to ensure consumer protection. Such regulations, consistent with applicable law, may address, among other issues, consumer data protections and privacy, consumer disclosure and unfair discrimination.

The availability of the value-added product or services must be based on fair, documented, written, objective evidence criteria and offered in a manner that is not unfairly discriminatory. The documented, written, criteria must be maintained by the insurer or producer and produced upon request by the Department.

Drafting Note: States may wish to consider alternative language based on their filing requirements.

If an insurer or producer does not have sufficient criteria, but has a good-faith belief that the product or service meets the criteria in (iv)(v), the insurer or producer may provide the product or service in a fair manner that is not unfairly discriminatory as part of a pilot or testing program for no more than one year, reasonable period of time upon approval of the commissioner. An insurer or producer must notify the Department of such a pilot or testing program offered to consumers in this state prior to launching and may proceed with the program unless the Department objects within twenty-one days of notice.

The cost to the insurer or producer offering the product or service to any given client should be reasonable in comparison to that client's premiums or insurance coverage for the policy class.

Drafting Note: This Section is not intended to limit or curtail existing value-added services in the marketplace. It is intended to promote innovation in connection with the offering of value-added services while maintaining strong consumer protections.

An insurer or a producer may:

Offer or give non-cash promotional or advertising items or non-cash gifts, items, or services, including meals to, or charitable donations on behalf of a customer, in connection with the marketing, sale, purchase, or retention of contracts of insurance, as long as the cost is reasonable in comparison to the premium or proposed premium and the cost of the gift or service is not included in any

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, however specific prohibitions may exist related to transactions governed by the Real Estate Settlement Procedures Act of 1974 and the laws and regulations governing the Federal Crop Insurance Corporation Risk Management Agency.

Offer or give non-cash gifts, items, or services including meals to or charitable donations on behalf of a customer, to commercial or institutional customers, in connection with the marketing, for the sale, purchase, or retention of contracts of insurance, as long as the cost is reasonable in comparison to the premium or proposed premium and the cost of the gift or service is not included in any
Unfair Trade Practices Act

amounts charged to another person or entity. The offer must be made in a manner that is not unfairly discriminatory. The customer may not be required to purchase, continue to purchase or renew a policy in exchange for the gift, item or service.

Conduct raffles or drawings to the extent permitted by state law, as long as there is no financial cost to entrants to participate, the drawing or raffle does not obligate participants to purchase insurance, the prizes are not valued in excess of a reasonable amount determined by the commissioner and the drawing or raffle is open to the public. The raffle or drawing must be offered in a fair manner that is not unfairly discriminatory. The customer may not be required to purchase, continue to purchase or renew a policy in exchange for the gift, item or service.

Drafting Note: If a state wishes to limit (f) to a stated monetary limit 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, however specific prohibitions may exist related to transactions governed by the Real Estate Settlement Procedures Act of 1974 and the laws and regulations governing the Federal Crop Insurance Corporation Risk Management Agency. States may want to consider a limit for commercial or institutional customers.

3. An insurer, producer or representative of either may not offer or provide insurance as an inducement to the purchase of another policy or otherwise use the words “free”, “no cost” or words of similar import, in an advertisement.

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 ensure that it contains sufficient provisions against rebating. If a state does not, this section may be expanded to cover all lines of insurance.

I. Prohibited Group Enrollments. No insurer shall offer more than one group policy of insurance through any person unless such person is licensed, at a minimum, as a limited insurance representative. However, this prohibition shall not apply to employer/employee relationships, nor to any such enrollments.

J. Failure to Maintain Marketing and Performance Records. Failure of an insurer to maintain its books, records, documents and other business records in such an order that data regarding complaints, claims, rating, underwriting and marketing are accessible and retrievable for examination by the insurance commissioner. Data for at least the current calendar year and the two (2) preceding years shall be maintained.

K. Failure to Maintain Complaint Handling Procedures. Failure of any insurer to maintain a complete record of all the complaints it received since the date of its last examination under Section [insert applicable section]. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of each complaint, and the time it took to process each complaint. For purposes of this subsection, “complaint” shall mean any written communication primarily expressing a grievance.

L. Misrepresentation in Insurance Applications. Making false or fraudulent statements or representations on or relative to an application for a policy, for the purpose of obtaining a fee, commission, money or other benefit
from any provider or individual person.

M. Unfair Financial Planning Practices. An insurance producer:

1. Holding himself or herself out, directly or indirectly, to the public as a “financial planner,” “investment adviser,” “consultant,” “financial counselor,” or any other specialist engaged in the business of giving financial planning or advice relating to investments, insurance, real estate, tax matters or trust and estate matters when such person is in fact engaged only in the sale of policies. This provision does not preclude persons who hold some form of formal recognized financial planning or consultant certification or designation from using this certification or designation when they are only selling insurance. This does not permit persons to charge an additional fee for services that are customarily associated with the solicitation, negotiation or servicing of policies.

2. (a) Engaging in the business of financial planning without disclosing to the client prior to the execution of the agreement provided for in Paragraph 3, or solicitation of the sale of a product or service that

   (i) He or she is also an insurance salesperson, and
   (ii) That a commission for the sale of an insurance product will be received in addition to a fee for financial planning, if such is the case.

(b) The disclosure requirement under this subsection may be met by including it in any disclosure required by federal or state securities law.

3. (a) Charging fees other than commissions for financial planning by insurance producer, unless such fees are based upon a written agreement, signed by the party to be charged in advance of the performance of the services under the agreement. A copy of the agreement must be provided to the party to be charged at the time the agreement is signed by the party.

   (i) The services for which the fee is to be charged must be specifically stated in the agreement.
   (ii) The amount of the fee to be charged or how it will be determined or calculated must be specifically stated in the agreement.
   (iii) The agreement must state that the client is under no obligation to purchase any insurance product through the insurance producer or consultant.

Drafting Note: This subsection is intended to apply only to persons engaged in personal financial planning.

(b) The insurance producer shall retain a copy of the agreement for not less than three (3) years after completion of services, and a copy shall be available to the commissioner upon request.

N. Failure to file or to certify information regarding the endorsement or sale of long-term care insurance. Failure of any insurer to:

1. File with the insurance department the following material:

   (a) The policy and certificate;
   (b) A corresponding outline of coverage; and
   (c) All advertisements requested by the insurance department; or
Unfair Trade Practices Act

(2) Certify annually that the association has complied with the responsibilities for disclosure, advertising, compensation arrangements, or other information required by the commissioner, as set forth by regulation.

O. Failure to Provide Claims History

(1) Loss Information—Property and Casualty. Failure of a company issuing property and casualty insurance to provide the following loss information for the three (3) previous policy years to the first named insured within thirty (30) days of receipt of the first named insured’s written request:

(a) On all claims, date and description of occurrence, and total amount of payments; and

(b) For any occurrence not included in Subparagraph (a) of this paragraph, the date and description of occurrence.

(2) Should the first named insured be requested by a prospective insurer to provide detailed loss information in addition to that required under Paragraph (1), the first named insured may mail or deliver a written request to the insurer for the additional information. No prospective insurer shall request more detailed loss information than reasonably required to underwrite the same line or class of insurance. The insurer shall provide information under this subparagraph to the first named insured as soon as possible, but in no event later than twenty (20) days of receipt of the written request. Notwithstanding any other provision of this section, no insurer shall be required to provide loss reserve information, and no prospective insurer may refuse to insure an applicant solely because the prospective insurer is unable to obtain loss reserve information.

(3) The commissioner may promulgate regulations to exclude the providing of the loss information as outlined in Paragraph (1) for any line or class of insurance where it can be shown that the information is not needed for that line or class of insurance, or where the provision of loss information otherwise is required by law.

Drafting Note: Loss information on workers’ compensation is an example in some states of loss information otherwise required by law.

(4) Information provided under Paragraph (2) shall not be subject to discovery by any party other than the insured, the insurer and the prospective insurer.

Drafting Note: This provision may not be required in states that have a privacy act that governs consumer access to this information. Those states considering applying this requirement to life, accident and health lines of insurance should first review their state privacy act related to issues of confidentiality of individual insured information.

P. Violating any one of Sections [insert applicable sections].

Drafting Note: Insert section numbers of any other sections of the state’s insurance laws deemed desirable or necessary to include as an unfair trade practice, such as cancellation and nonrenewal laws.

Chronological Summary of Actions (all references are to the Proceedings of the NAIC).

1990 Proc. 16, 25, 122, 146 (changed name of model).
2001 Proc. 2nd Quarter 7, 9, 836, 843-853 (amended and reprinted).

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# NAIC CYBERSECURITY AND DATA SECURITY/DATA PRIVACY WORKSTREAMS

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| **NAIC Insurance Data Security Model Law (#668)** | State adoption of the model and implementation. | Executive (EX) Committee Legal  
- Holly Weatherford  
- Jennifer McAdam | Model complete/implementation in process with 11 states having adopted the model and more to follow in 2021. Those states are AL, CT, DE, IN, LA, MI, MS, NH, OH, SC, and VA. |
| Updates to Financial Condition Examiners Handbook | E Committee has updated and strengthened existing guidance for examiners regarding IT systems and protocols to draw more focus to the consideration of cybersecurity during an exam. | E Committee  
- Miguel Romero  
- Bailey Henning | In 2020, the tools associated with the Financial Condition Examiners Handbook (FCEH) were again updated to enhance cybersecurity related guidance. This year a new tool that maps Market Conduct guidance to the FCEH guidance, and therefore allows for coordination between functions, was created. Updates were also made to a previous tool that maps FCEH guidance to the Data Security Model Law to allow the work performed to ensure compliance with the Law can be integrated into the broader Financial Exam process. |
| Updates to Market Regulation Handbook | D Committee updated the Market Regulation Handbook to strengthen sections regarding cybersecurity, including development of a pre-breach and a post-breach checklist. | D Committee  
- Tim Mullen  
- Lois Alexander  
- Petra Wallace | The NAIC adopted an insurance data security pre-breach checklist and an insurance data security post-breach checklist for its Market Regulation Handbook to provide guidance for market conduct examinations. The checklists were adopted by the Market Regulation and Consumer Affairs (D) Committee on July 15, 2019 and by the NAIC Joint Executive (EX) Committee and Plenary at the NAIC 2019 Summer National Meeting. |
| Cyber Tabletop Exercises (Domestic) | Through the Financial and Banking Information Infrastructure Committee (FBIIC), Treasury, state insurance regulators, and the NAIC have collaborated to facilitate tabletop exercises with insurers to explore cyber incident response and recovery. These exercises are a | E Committee, D Committee, DC staff (govt. relations)  
- Frosty Mohn (lead) | The NAIC, together with the Kansas and Missouri Departments of Insurance, hosted a tabletop exercise in Kansas City in September 2019. The After-Action report for the KS-MO event was |
### NAIC CYBERSECURITY AND DATA SECURITY/DATA PRIVACY WORKSTREAMS

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|       | useful means for regulators and the insurance industry to test their ability to respond effectively to these incidents. In February 2019, Director Farmer, the NAIC, and Treasury collaborated to host a regional tabletop in Columbia, SC. This exercise was the culmination of several months of prep work with the SC DOI, NAIC, Treasury, insurance industry, and federal and state law enforcement officials. DC staff and Director Farmer have also participated in two insurance tabletops at Treasury. | • Tim Mullen  
• Miguel Romero  
• Brooke Stringer  
• Jeff Czajkowski | delivered to attendees of in October 2019. |
<p>|       | Discussions are ongoing and future exercises in other states with the NAIC taking responsibility for coordination and logistics, are under consideration. Ohio was to be the first tabletop in 2020 without Treasury support. This event was scheduled for 5/19/20 as a single state event with only Ohio domestics. | | |
|       | Illinois requested to host the second 2020 tabletop in Chicago but asked to put that on hold at this time. Connecticut also agreed to host a cyber tabletop in October 2020. | | |
|       | Due to COVID-19, cyber tabletops in Ohio and Connecticut were canceled for 2020. Illinois remains on the schedule for May 25, 2021 and we plan to discuss re-scheduling with OH and CT following the Fall national meeting. | | |
|       | We are working on a new cloud outage scenario that we plan to use for the CT event. | | |
|       | Frosty Mohn has been participating in workshops sponsored by Treasury to develop a common playbook to be used by FBIIC, SIFMA and FS-ISAC should a significant financial sector event occur. | | |
|       | As a follow-up to the already held tabletop exercises, CIPR has developed an insurer cyber-security preparedness survey they plan to | |</p>
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<td>State Insurance Consumer Data Privacy</td>
<td>Pursuant to the federal Gramm-Leach-Bliley Act (GLBA), all states have adopted model laws for protecting consumer data that meet or exceed GLBA’s requirements. The NAIC will evaluate state insurance privacy protections from GLBA and other laws to assess whether enhancements are needed to certain models, such as the Privacy of Consumer Financial and Health Information Model Regulation (#672) and the Insurance Information and Privacy Protection Model Act (#670).</td>
<td>D Committee, DC staff (govt. relations)</td>
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<tr>
<td>Incident Response Best Practices Guidelines for State Insurance Departments</td>
<td>Through the tabletops and FBIIC discussions, industry and government officials have recommended developing a best practices guideline for cyber incident response. The SEC and CFTC have developed plans that may be helpful resources for us.</td>
<td>D Committee, E Committee, DC staff (govt. relations)</td>
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<td>EU-U.S. Cyber Exercise Template (International)</td>
<td>As part of the EU-U.S. Insurance Project, FIO, the NAIC, European Commission, EIOPA and EU member states have discussed potential development of an exercise template or process.</td>
<td>G Committee, E Committee, D Committee</td>
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## NAIC CYBERSECURITY AND DATA SECURITY/DATA PRIVACY WORKSTREAMS

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| EU- U.S. Cyber Insurance Dialogue Project – The cyber insurance Market | As part of the EU- U.S. Insurance Project, FIO, the NAIC, European Commission, EIOPA and EU member states have discussed issues relating to challenges and opportunities of the cyber insurance market. | G Committee, E Committee  
- Gita Timmerman  
- Sara Robben  
- Miguel Romero | In 2020 the Cyber Insurance WG continued discussing approaches to collect data and develop techniques supporting more sophisticated assessment of cyber risks including potential accumulation risks (e.g. scenario based stress testing), sharing US and EU approaches relative to cyber incident reporting and cyber incident response best practices including discussion of whether global initiatives could facilitate further understanding and underwriting of cyber risks and discussing the current role and use of risk pools to provide additional capacity to tackle the potential systemic nature of cyber risk. |
| Cybersecurity Insurance Market Analysis | NAIC receives questions from industry and others asking about the cyber data. The NAIC currently produces an annual report based on the Cybersecurity Annual Statement Supplement and data collected from surplus lines writers that is presented up to the Innovation and Technology (EX) Task Force prior to public dissemination. Additionally, CIPR and NAIC staff involved in cybersecurity market and innovation and technology analysis and research have established a program to further this work based on previous events and workstreams as well as planned data analysis with the expectation of building on a previous CIPR cybersecurity draft white paper. | C Committee  
- Jeff Czajkowski  
- Brooke Stringer  
- Sara Robben  
- Andy Daleo | The 2019 data year report has been delayed due to COVID work priorities and annual data verification work regarding the alien surplus lines data. Currently follow up with alien surplus lines writers is in progress and the report should be available for public release by mid-November.  

There has been increased Congressional attention on the cyber insurance market in light of the March 2020 Cyberspace Solarium Commission report. In response the NAIC plans to:  
- Summarize the 2017 and 2018 NAIC-Stanford events as they pertain to the Solarium report recommendations. |
# NAIC CYBERSECURITY AND DATA SECURITY/DATA PRIVACY WORKSTREAMS

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| Cyber – International | NAIC staff is involved with the international regulators on issues related to cybersecurity. | G Committee, Federal  
- Gita Timmerman  
- Denise Matthews  
- Sara Robben  
- Ryan Workman | • Integrate findings with the NAIC Cybersecurity Supplemental and surplus lines data and the CIPR, EYOPA and/or IAIS white papers.  
• Leverage other data sources related to the cyber loss landscape.  
In 2020 the IAIS Fintech Forum has been looking at issues on outsourcing to specialist technology providers; the use of technology for supervisory purposes; and responses to Fintech developments. The Forum will meet this November to continue its work on these topics. In Feb. 2020, the IAIS Cyber Underwriting Small Group delivered a report to the IAIS ExCo identifying challenges to the sustainable development of cyber risk underwriting and guidance to supervisors on how to proactively respond to these challenges. The Small Group was tasked with preparing a public version of report to be released by the end of 2020. |
| NAIC Internal Cybersecurity and Data Security/Privacy | NAIC provides services to our state members (e.g., SERFF, SBS, etc.) and individual state governance and compliance offices look to tools such as the Shared Information Gathering (SIG) questionnaire and SOC 2 Type 2 report to validate that we observe sound security practices in the protection, consumption and distribution of their data. Third parties whose insurance data we collect and is essential to delivering these state services (e.g., ACLI members) use these tools to assess the security of their data in our protection. Likewise, NAIC seeks SIG and SOC 2 reports before electing to do business with a company for services that enhance the offerings that we provide to the states (e.g., Oracle). | Internal Administration (EX1) Subcommittee  
- Frosty Mohn  
- Jeremy Coukoulis | NAIC Security maintains, on an annual basis, a self-assessment of their security posture for communication with third parties using the Shared Information Gathering (SIG) questionnaire. This has been instrumental in our cyber preparedness to outside entities. An abbreviated four (4) month SOC 2 on-premise for the Security Trust Principle was completed in June and has been distributed to numerous states and third parties conducting business with the NAIC. |
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<td>Work is underway on a SOC 2 for the Security Trust Principle for all cloud assets. Gap assessments are being conducted and an abbreviated four (4) attest is planned in 2020. The NAIC has completed the 2020 update of the Shared Information Gathering (SIG) assessment, which includes a review by an outside expert. The current SIG is for on-premise, but we are developing a cloud inclusive version. The first SOC 2 assessment for cloud will be for an abbreviated 4 month period beginning on 11/1/20 through 2/28/21.</td>
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COVID-19 Regulatory Relief or Regulatory Accommodations Related to Innovation and Technology

Request for Information – Summary

Introduction:

This document includes the Request for Information send to interested parties and response tables indicating the comment and which organizations offered a similar or same suggestion. The tables cover the following areas:

- Electronic Commerce
- Regulatory Capabilities
- Claims Facilitation
- Specific to Surplus Lines

While most did not include the specific statutes or statutory language that they recommend eliminating or revising, the ACLI did send a specific recommendation suggesting developing a bulletin or bulletins to address concerns related to existing issues with the state by state implementation of e-signature laws including UETA and existing obstacles to moving e-commerce forward. That information is summarized at the end of this document.

Responses were received from the following organizations:

- American Council of Life Insurers (ACLI)
- American Property Casualty Insurance Association (APCIA)
- BlueCross BlueShield Association (BCBSA)
- Insured Retirement Institute (IRI)
- Lloyd’s
- McDermott Will & Emery (mwe)
- National Association of Mutual Insurance Companies (NAMIC)
- National Association of Professional Insurance Agents (PIA)
- Wholesale & Specialty Insurance Association (WSIA)

Original Request:

September 28, 2020

Request to solicit comments from any interested party related to specific “regulatory relief” or “regulatory accommodations” related to innovation and technology

This is an open request for information from the Innovation Technology (EX) Task Force and the Innovation and Technology State Contacts.

The purpose of this request is to solicit comments from interested parties related to specific “regulatory relief” or “regulatory accommodations” offered by states as a result of the COVID-19 pandemic, that it would recommend be continued or made permanent, related to innovation and technology. Was there some type of regulatory relief or accommodation offered, or does there continue to be a law, regulation or regulatory guidance or established practice in place, that prohibits or limits insurers or producers from implementing or using newer technologies, data, methods or processes, that is necessary in order to continue to serve customers and maintain operations?

If applicable and possible, please identify the law, regulation or practice that previously or continues to be, an obstacle, impediment or challenge to implementing what was and is necessary as a result of the COVID-19 pandemic and related implications.

This information is requested to help regulators gain an understanding of current and/or prior roadblocks to innovative products and services made possible through technology and data. If responding for multiple companies or a group, please summarize your response.
Response Summary:

Electronic Commerce

<table>
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<tr>
<th>Key Points</th>
<th>Responders</th>
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<tbody>
<tr>
<td>e-signatures: if allowed by law, provide certainty it will be accepted. Possibly even accept verbal if verified by e-statements</td>
<td>APCIA, IRI, NAMIC, mwe</td>
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<tr>
<td>e-delivery/e-posting: develop a comprehensive solution for this and be accepted in every state. New Hampshire legislation was provided as an example.</td>
<td>APCIA, IRI</td>
</tr>
<tr>
<td>e-notary: during COVID 36 states and the District of Columbia suspended this requirement and some states eliminated it. Proposal is to eliminate in person notary requirements.</td>
<td>APCIA, WSIA, PIA, IRI, NAMIC, Lloyd’s, mwe</td>
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Common Theme: Implement E-sign and UETA requirements more consistently and uniformly in all jurisdictions.

Regulatory Capabilities

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<tr>
<td>Education/Continuing Education: Eliminate in person classroom licensing requirements replaced with virtual or online options.  • Implement reciprocity where it does not exist and flexibility with remote fingerprinting should be encouraged. (NAMIC)</td>
<td>APCIA, WSIA, PIA, IRI, NAMIC</td>
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<td>Allow complaints to be sent via email as opposed to postal service.</td>
<td>APCIA</td>
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<td>Conduct financial and market conduct examinations remotely/virtually.</td>
<td>APCIA, WSIA</td>
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<td>e-filings: eliminate hard copy regulatory filings or eliminate the need for a wet signature or traditional notarization for those filings</td>
<td>APCIA, Lloyd’s, WSIA</td>
</tr>
<tr>
<td>Allow e-payment for all required regulatory fees such as premium taxes  • Waive late fees for non-electronic payments</td>
<td>APCIA, Lloyd’s, WSIA</td>
</tr>
<tr>
<td>Eliminate wet signature requirements for regulatory filings such as biographical affidavits</td>
<td>APCIA, mwe</td>
</tr>
<tr>
<td>Conduct workers compensation hearings remotely/virtually</td>
<td>PIA</td>
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<td>Implement regulatory relief uniformly through the NAIC</td>
<td>IRI</td>
</tr>
<tr>
<td>Implement bulletins that alleviate the need for in-person MGA/TPA audits and allow virtual audits of employers and other similar requirements</td>
<td>NAMIC, mwe</td>
</tr>
<tr>
<td>Remove requirements that customer service representatives must work in a physical office with general lines licensees.</td>
<td>WSIA, mwe</td>
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Common Theme: Move to allow regulatory requirements to be remote/virtual and allow filings to be digital.

Claims Facilitation

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<th>Responders</th>
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<td>Allow digital adjudication of claims including photo inspection particularly around auto inspections and allow non-licensed adjusters to be able to the photos</td>
<td>APCIA</td>
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<tr>
<td>Drones: Allow drones in adjusting including relaxing “fly beyond their line of sight” requirements</td>
<td>APCIA</td>
</tr>
<tr>
<td>Possibly draft legislation that would resolve concerns over “paper trail” liability related to certified letters for reservation of rights and coverage denials. The letter noted that there is no existing regulatory requirement to do this, but still concerns.</td>
<td>APCIA</td>
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<tr>
<td>Allow remote/virtual administrative hearings to take place as well as video depositions.</td>
<td>APCIA</td>
</tr>
<tr>
<td>Consider timing of electronic payments happening “at the same time” – proof of loss must be sent through the mail</td>
<td>APCIA</td>
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Telemedicine: Allow this and relax in-person requirements

- BCBSA suggests leveraging their existing “Guiding Principles for Telehealth” and allowing private insurers establish appropriate rules

| APCIA, BCBSA |

**Common Theme:** Move to allow claims processing to be remote/virtual and expand what can be done digitally/electronically.

### Specific to Surplus Lines

#### Key Points

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| Diligent Search: “on demand” product pricing is difficult due to the three declination process in the current environment. Particularly where it must be documented and filed with the state. Should relax and automate this process.  
- Eliminate “per policy” diligent search  
- Suggest changing this to a quarterly search (Lloyds) | WSIA, mwe, Lloyd’s |

Similar to the accommodation listed above, suggest extending acceptance of practices that facilitate real-time, live declinations to not be deemed an unfair trade practice or violating existing state laws such as those governing policy cancellations and nonrenewal.

| mwe |

Expand export lists for coverages typically unavailable in the admitted market.

| WSIA, mwe |

**Common Theme:** Make it easier to write coverages “on demand” and not available in the admitted market.

### ACLI Specific Recommendations:

#### UETA Issues

1. Not all states have adopted UETA
2. Not all who have adopted it have done so uniformly
3. Laws and regulations impose requirements on e-delivery that can conflict
4. UETA requires “opt-in” which can be problematic

#### ACLI Recommendations

1. Craft and adopt state bulletin(s) to eliminate existing language that is now outdated and does not accommodate digital or e-commerce/payment.
2. ACLI has offered a draft bulletin for consideration
3. The draft bulletin includes e-commerce/communication considerations, producer licensing online and onsite examination recommendations.
4. Provides and appendix of existing insurance regulations and laws that the bulletin will pertain to.
5. Recommends removing “opt in” requirements

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Innovation and Technology (EX) Task Force
Virtual Meeting
November 30, 2020

The Innovation and Technology (EX) Task Force met Nov. 30, 2020. The following Task Force members participated: Jon Godfread, Chair, represented by Chris Aufenthie, Johnny Palsgraaf and John Arnold (ND); Elizabeth Kelleher Dwyer, Vice Chair, and Matt Gendron (RI); Lori K. Wing-Heier and Chris Murray (AK); Jim L. Ridling represented by Paul Lombardo (CT); Karima M. Woods represented by Sharon Shipp (DC); Trinidad Navarro represented by Tim Li and Leslie Ledogar (DE); David Altmair represented by Rebecca Smid and Mike Yaworsky (FL); Colin M. Hayashida represented by Kathleen Nakasone and Martha Im (HI); Doug Ommen represented by Johanna Nagel and Travis Grassel (IA); Dean L. Cameron represented by Weston Trexler, Eric Fletcher and Kathy McGill (ID); Robert H. Muriel represented by CJ Metcalf (IL); Vicki Schmidt, LeAnn Crow and Tate Flott (KS); Sharon P. Clark represented by Russell Hamblen (KY); James J. Donelon represented by Tom Travis and Barry Ward (LA); Gary D. Anderson (MA); Kathleen A. Birrane and Robert Baron (MD); Eric A. Cioppa represented by Benjamin Yardley (ME); Anita G. Fox represented by Chad Arnold (MI); Grace Arnold and Phil Vigliaturo (MN); Chlora Lindley-Myers represented by Cynthia Amann (MO); Mike Chaney, Andy Case and David Browning (MS); Matthew Rosendale represented by Bob Biskupiak (MT); Mike Causey represented by Tracy Biehn (NC); Chris Nicolopoulos represented by Michelle Heaton, Christian Citarella and Emily Doherty (NY); Marlene Caride represented by Randall Currier (NJ); Barbara D. Richardson (NV); Tynesia Dorsey represented by Amanda Baird (OH); Jessica K. Altman represented by Michael Humphreys and Michael McKenney (PA); Raymond G. Farmer represented by Ryan Basnett and Michael Shull (SC); Larry D. Deiter and Maggie Dell (SD); Carter Lawrence represented by David Combs (TN); Texas represented by Michael Nored (TX); Scott A. White represented by Trish Todd and Vicki Ayers (VA); Mike Kreidler represented by John Haworth (WA); and Mark Afable represented by Jody Ullman, Diane Dambach and Barbara Belling (WI).

1. **Adopted its Nov. 4 Minutes**

Commissioner Schmidt made a motion, seconded by Commissioner Birrane, to adopt the Task Force’s Nov. 4 minutes (Attachment Five-A). The motion passed unanimously.

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

Superintendent Dwyer said the primary reason for the meeting is to give an opportunity to provide oral comments and ask any questions. She said seven entities provided written comments in the last of three rounds of commenting, and all interested parties were asked if they wanted to speak during this meeting. She asked the first to present comments. Wes Bissett (Independent Insurance Agents and Brokers of America—IIABA) said his comments focus on Section 4(H)(2)(f), and they are in his written comments. He said a number of states have modified their anti-rebating statutes, and some have enacted monetary thresholds. He said the intent is clear, but he worries about confusion and unintended consequences. Therefore, he urges further consideration of changing the language: 1) two safe harbors refer to a universe of things of value that might be offered, but do so in different and inconsistent ways, so he encouraged creating more consistency and uniformity in terminology; 2) he said the provision in Section (f)(ii) may lead to effectively not permitting an agent to take only existing clients out to lunch or hold a customer appreciation event even though that is not the intent; and 3) he said Section (f)(i) and (f)(ii) say the thing of value must be offered in a “fair” manner. He said it is unclear what that means or what it would require or prohibit, so he would encourage considering whether that is needed.

Angela Gleason (American Property Casualty Insurance Association—APCIA) said the APCIA suggests using “documented” instead of “written” in Section 4(H)(2)(e)(v) to make it a technology neutral term and eliminate the maintenance requirement because it is not clear what that means from the perspective of timing, specific format, or how long it must be maintained. She said for clarity, the APCIA recommends deleting that. She said regarding Section 4(H)(2)(e)(vi), the APCIA offered language in its written comments that encourages innovation without delaying speed to market, and it provides the DOI of Insurance (DOI) notice. She said acknowledging that may not go far enough, but the APCIA suggests adding on to the requirement to notify the DOI X number of days before launching the program as a way of giving state insurance regulators the opportunity to review and ask questions but not have it be a formal approval and discussion process. She said the APCIA also agrees with the IIABA in its recommendation to put a one-year time frame on it, creating a good balance between promoting innovation and consumer protections.
Superintendent Dwyer said there is an NAIC model regarding record retention, and if a state has that, it would answer the question regarding record retention. She also clarified the APCIA’s second point.

Birny Birnbaum (Center for Economic Justice—CEJ) said the CEJ agrees with eliminating repetition regarding the use of the term “fair manner,” as it is not clear what that is intended to be add. He said the CEJ also agrees with changing the reference to “this regulation” in Section 4(H)(2)(e)(iv) to possibly “statute.” He said this issue is related to consistency of terms. He said the CEJ does not agree with eliminating the language that ties the gift to the purchase of a policy. He said the CEJ also opposes the APCIA addition of language in Section 4(H)(2)(e)(ii)(VI), as it opens this up too broadly and is an undefined area. He said the CEJ also opposes the American Council of Life Insurers’ (ACLI’s) proposed drafting note, as it is unclear what existing value “added services” refers to; the previously presented APCIA items related to retention of records, as it would make it unaccountable and inconsistent; and notification to the DOI under Section 4(H)(2)(e)(vi). He said in summary, this language has come a long way and represents a good balance.

Superintendent Dwyer asked Mr. Bissett to clarify that his intention is to ensure that existing customers can receive something limited only to existing customers but not to eliminate the provision that the gift cannot be tied to purchase. Mr. Bissett said yes and that there might be a way to save the language but tie it to non-customer offers. He said the IIABA wants to ensure that agents can have, for example, a customer appreciation event; therefore, it would be limited to existing customers. Superintendent Dwyer said there seems to be agreement regarding the intent.

Kate Jensen (Council of Insurance Agents & Brokers—CIAB) said the CIAB is focused on the last sentence in Section (f)(ii). She said the CIAB does not see producers offering valuable services to people who are not clients or purchasing the product, so this effectively takes away the recognition that commercial and institutional customers are in a different posture than individuals in terms of evaluating the rebating laws. She said this was drafted with that distinction in mind, and the added sentence becomes problematic in terms of maintaining that distinction. She said the CIAB also disagrees with the drafting note that puts a dollar limit in place, as a “one size fits all” does not work for commercial and institutional type customers, and the language that requires the offering of the same thing to customers and non-customers is not realistic. Superintendent Dwyer said there is no intention to allow for the tying of a gift to a purchase. Mr. Birnbaum said this is a provision for gifts, and he does not see any requirement that someone be an existing customer in order to get a gift. He said if it is a contractual service, it is not germane to this section anyway.

David Leifer (ACLI) said the ACLI has an interest in not inadvertently taking away things that are already in the marketplace, and he suggested expanding on the financial wellness item. He said the ACLI suggested clarifying language that was not accepted for the latest draft, so it submitted a drafting note for consideration clarifying that there is no intention to stifle innovation or take away things already offered in the marketplace.

Superintendent Dwyer said the drafting team will post a new draft prior to the Task Force meeting Dec. 4.

Having no further business, the Innovation and Technology (EX) Task Force adjourned.
The Innovation and Technology (EX) Task Force met Nov. 4, 2020. The following Task Force members participated: Jon Godfread, Chair, and Chris Aufenthie (ND); Elizabeth Kelleher Dwyer, Vice Chair (RI); Lori K. Wing-Heier and Chris Murray (AK); Alan McClain represented by Jimmy Harris (AR); Evan G. Daniels, Tom Zuppan and Erin Klug (AZ); Ricardo Lara represented by Lucy Jabourian (CA); Andrew N. Mais and George Bradner (CT); Trinidad Navarro represented by Tim Li and Leslie Ledogar (DE); David Altmaier, Rebecca Smid and Mike Yaworsky (FL); Colin M. Hayashida and Kathleen Nakasone (HI); Doug Ommen represented by Travis Grassel (IA); Dean L. Cameron and Weston Trexler (ID); Robert H. Muriel (IL); Stephen W. Robertson represented by Amy Beard and Karl Knable (IN); Vicki Schmidt, LeAnn Crow and Tate Flott (KS); Sharon P. Clark and DJ Wasson (KY); James J. Donelon represented by Richard Piazza (LA); Gary Anderson and Rachel M. Davison (MA); Kathleen A. Borrane represented by Jay Coon (MD); Eric A. Cioppa and Benjamin Yardley (ME); Anita G. Fox represented by Chad Arnold (MI); Grace Arnold and Phil Vigliaturo (MN); Chlora Lindley-Myers and Cynthia Amann (MO); Mike Chaney represented by Andy Case (MS); Mike Causey represented by Kathy Shortt (NC); Bruce R. Ramge (NE); Chris Nicolopoulos represented by Emily Doherty (NH); Marlene Caride represented by Randall Currier (NJ); Barbara D. Richardson (NV); Tynesia Dorsey, Amanda Baird and Lori Barron (OH); Andrew R. Stolfi represented by Aaron Teverbaugh (OR); Jessica K. Altman, Michael Humphreys, Michael McKenney and Shannen Logue (PA); Raymond G. Farmer represented by Michael Wise (SC); Larry D. Deiter (SD); Hodgen Mainda represented by David Combs and Rachel Jade-Rice (TN); Texas represented by Michael Nored and Marianne Baker (TX); Scott A. White represented by Vicki Ayers (VA); Michael S. Pieciak represented by Emily Brown (VT); Mike Kreidler represented by Molly Nollette (WA); James A. Dodrill represented by Erin K. Hunter and Joylynn Fix (WV); and Mark Afable and Nathan Houdek (WI).

1. **Adopted its Oct. 15 Minutes**

Director Dieter made a motion, seconded by Director Cameron, to adopt the Task Force’s Oct. 15 minutes (Attachment Five-A2). Commissioner Godfread asked if there was any discussion. Mr. Currier said the reference to Carl Sornson (NJ) related to the anti-rebating draft model law amendments should have referenced him, and he suggested this amendment to the minutes. Hearing no other discussion, Director Dieter and Director Cameron said they would accept that amendment to their motions. The motion passed unanimously.

2. **Adopted its 2021 Proposed Charges**

Commissioner Godfread reviewed the proposed charges for 2021 (Attachment Five-A1). First, he said the Task Force will continue its work to provide forums, resources and materials for the discussion of innovation and technology developments in the insurance sector. He said the Task Force has consistently, from the beginning, sought to encourage and even clear the way for innovation, made possible through advances in technology and data and computing capabilities that benefit consumers and just make sense from an operational efficiency perspective. He said that work will continue in 2021, but the Task Force will also take some time to focus on the impact COVID-19 has had on this area, what has been learned, and what can be taken away from that experience.

Second, Commissioner Godfread said the addition of the words “and coordinate the development of” in 1B is to make clear that workstreams will likely be assigned to various subject matter expert (SME) committees, as has been the case with other letter committee working groups working on related workstreams like the Casualty Actuarial and Statistical (C) Task Force, the Accelerated Underwriting (A) Working Group, and the Privacy Protections (D) Working Group. He said where there is a group with specific expertise in a particular area, that will continue to be the case; but for the benefit of all stakeholders and to ensure appropriate coordination, the charges anticipate the Task Force playing a coordinating role in that regard.

Commissioner Godfread said the charge to monitor regulatory issues related to autonomous vehicles is no longer present, as the Property and Casualty Insurance (C) Committee will be monitoring that since the insurance regulatory issues look to be focused on the evolution of the auto insurance product. He also said the National Highway Traffic Safety Administration (NHTSA) will likely be the primary regulatory authority involved in this space regarding issues related to artificial intelligence (AI) and technology.
Commissioner Godfread said the Task Force will continue to play a coordinating role regarding cybersecurity workstreams; and with the combining of the Big Data (EX) Working Group and the Artificial Intelligence (EX) Working Group, there will be a focus on “next steps” now that the AI Principles have been adopted. He reviewed the reasons for combining the two groups and creating efficiency in accomplishing their objectives.

Commissioner Godfread said the Speed to Market (EX) Working Group has a new charge specific to the System for Electronic Rate and Form Filing (SERFF) modernization project since this group has subject matter expertise related to SERFF.

Commissioner Godfread said one comment letter related to the charges was received from the American Property Casualty Insurance Association (APCIA), and he asked if someone would like to speak to those suggested changes. Angela Gleason (APCIA) said the APCIA’s comment is related to the new Big Data and Artificial Intelligence (EX) Working Group’s first proposed charge. She said the APCIA suggests adding some flexibility for the Working Group. She said the APCIA appreciates and respects that the Working Group’s intent is to focus on governance, but it suggests changing the second sentence to read, “[p]resent and recommend next steps, if any, to the Innovation and Technology (EX) Task Force, which may include model governance for the use of big data and AI for the insurance industry.” She said the intent is to provide flexibility, alleviating any undue pressure to be focused on one solution.

Ms. Jabourian asked for clarification regarding whether the Big Data and Artificial Intelligence (EX) Working Group charges are limited to just the property and casualty line of business. Commissioner Godfread said the Big Data (EX) Working Group has focused on property and casualty in the past, but there is no limiting factor to just that line of business going forward with the Big Date and Artificial Intelligence (EX) Working Group. He asked if there are other comments. He said he would accept the APCIA suggested revision as a friendly amendment, as it provides some flexibility without limiting what the Working Group can do. Superintendent Dwyer moved adoption of the proposed charges with the APCIA suggested amendment.

Commissioner Mais said he recently reviewed a comment from the University of Connecticut suggesting a review of how criminal records are used in underwriting and fraud detection. Superintendent Dwyer withdrew her motion to provide an opportunity for discussion of Commissioner Mais’ comment. Commissioner Godfread said he does not believe anything in the proposed charges would prevent the Working Group from looking at that issue. Superintendent Dwyer said she believes it could be considered as part of the charges as drafted. Commissioner Mais agreed. Superintendent Dwyer said this should be documented as a note for the Working Group, as it moves forward with carrying out its charges. Commissioner Godfread said this topic will not get coverage yet this year and into 2021.

Superintendent Dwyer made a motion, seconded by Commissioner Richardson, to move adoption of the proposed charges with the APCIA amendments. The motion passed unanimously.

3. Discussed the Oct. 30 Anti-Rebating Draft Model Law Amendments and Outstanding Issues

Superintendent Dwyer reviewed the most recent proposed language dated Oct. 30 (Attachment C). She said the word “specified” is in subsection H(1) of the model, so it was changed back to that for consistency purposes. She said the words “primarily intended” were discussed in detail, and the decision was to go with “primarily designed.” She said the American Council of Life Insurers (ACLI) sent a comment indicating that subsection H(2)(e)(ii)VI should be amended for clarity, but the drafting team was not sure it needed to be. She said this can be revisited if needed. She said subsection H(2)(e)(vi) was re-written by Mr. Bradner and Mr. Aufenthie based on previous comments, and that language is included in the Oct. 30 draft. She said the intention is to accommodate states wishing to get a filing and those that do not wish to get a formal filing related to a pilot or testing program. She said the drafting team thought this language would address the issue, but if any stakeholder disagrees, they should send a specific written comment as to why they do not.

Superintendent Dwyer said there were comments stating that subsection H(2)(f)(i) is confusing. She said the drafting team considered the revised language suggested by the Texas Insurance Department, and it thought it was better and provided more clarity, so that was included in the last draft. She said the drafting note in that subsection section was moved to after all three subsections as opposed to just after subsection H(2)(f)(i), and it added the same language in the last sentence of subsections H(2)(f)(i) and H(2)(f)(iii) to subsection H(2)(f)(ii) for consistency.

Superintendent Dwyer said on the last call of the Task Force on Oct. 15, she reviewed the suggested changes in comment letters that the drafting team chose not to include in the most recent draft. She said if those commenters wish to provide more specifics related to their suggested language, they may do so. She said there was a suggestion to define terms, but given that this is a
subsection of a bigger piece of legislation, it was unclear as to how that would work, and the drafting team is not sure it is critical enough to do that.

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

Superintendent Dwyer said comments from the ACLI have been posted. She said they had been reviewed by the drafting team, and it thought the statements are contemplated in the current language; but if there is disagreement on that, she invites advice. She said the drafting team would go back and look at the financial wellness language in subsection H(2)(e)(ii) VI again, as suggested by the ACLI, before this is final. She said comments should be submitted by Nov. 18, and the drafting team will work to quickly get another draft posted prior to the Task Force’s meeting at the Fall National Meeting on Dec. 4 with the hope that it can be voted on for adoption.

4. Discussed Other Matters

Commissioner Godfread said there were some unforeseen issues with the surplus lines data related to the Cybersecurity Supplemental Data Report slowing its completion, but it should be released soon. He also reminded interested parties to submit their responses to the Request for Information, asking for information related to specific “regulatory relief” or “regulatory accommodations” offered by states as a result of the COVID-19 pandemic, that they would recommend be continued or made permanent related to innovation and technology. He said that information will be compiled and summarized for discussion by the Task Force during the Fall National Meeting.

Having no further business, the Innovation and Technology (EX) Task Force adjourned.
2021 PROPOSED CHARGES

INNOVATION AND TECHNOLOGY (EX) TASK FORCE

The mission of the Innovation and Technology (EX) Task Force is to provide a forum for regulator education and discussion of innovation and technology in the insurance sector, to monitor technology developments that affect the state insurance regulatory framework, and to develop regulatory guidance, as appropriate.

Ongoing Support of NAIC Programs, Products or Services

1. The **Innovation and Technology (EX) Task Force** will:
   A. Provide forums, resources and materials for the discussion of innovation and technology developments in the insurance sector, including the collection and use of data by insurers and state insurance regulators—as well as new products, services and distribution platforms—in order to educate state insurance regulators on how these developments affect consumer protection, privacy, insurer and producer oversight, marketplace dynamics, and the state-based insurance regulatory framework.
   B. Develop and coordinate the development of regulatory guidance, model laws or model law revisions, and white papers or make other recommendations related to innovation and technology, to the Executive (EX) Committee, as appropriate.
   C. Discuss emerging issues related to companies or licensees leveraging new technologies to develop products for on-demand insurance purposes—in addition to potential implications on the state-based insurance regulatory structure—including, but not limited to, reviewing new products and technologies affecting the insurance space and the associated regulatory implications.
   D. Coordinate with other NAIC committees and task forces, as appropriate, on technology, innovation, cybersecurity issues and data privacy.

2. The **Big Data and Artificial Intelligence (EX) Working Group** will:
   A. Research the use of big data and artificial intelligence (AI) in the business of insurance and evaluate existing regulatory frameworks for overseeing and monitoring their use. Present findings and recommend next steps, if any, to the Innovation and Technology (EX) Task Force and which may include model governance for the use of big data and AI for the insurance industry.
   B. Review current audit and certification programs and/or frameworks that could be used to oversee insurers’ use of consumer and non-insurance data and models using intelligent algorithms, including AI. If appropriate, recommend to and coordinate with the appropriate subject matter expert (SME) committees on development of modifications to model laws and/or regulations and regulatory guidance and/or handbooks regarding marketing, rating, underwriting and claims, regulation of data vendors and brokers, regulatory reporting requirements, and consumer disclosure requirements.
   C. Assess data needs and required tools for state insurance regulators to appropriately monitor the marketplace, and evaluate the use of big data and intelligent algorithms, including AI in underwriting, rating, claims and marketing practices. This assessment shall include gaining a better understanding of currently available data and tools, as well as recommendations for additional data and tools, as appropriate. Based on this assessment, propose a means to include these tools into existing and/or new regulatory oversight and monitoring processes.
3. The **Speed to Market (EX) Working Group** will:
   
   A. Consider proposed System for Electronic Rate and Form Filing (SERFF) features or functionality presented to the Working Group by the SERFF Advisory Board, likely originating from the SERFF Product Steering Committee (PSC). Upon approval and acquisition of any needed funding, direct the SERFF Advisory Board to implement the project. Receive periodic reports from the SERFF Advisory Board, as needed.
   
   B. Provide feedback and recommendations concerning the SERFF modernization when requested by the Executive (EX) Committee and any group assigned oversight of the SERFF modernization by the Executive (EX) Committee.
   
   C. Discuss and oversee the implementation and ongoing maintenance/enhancement of speed to market operational efficiencies related to product filing needs, efficiencies and effective consumer protection. This includes the following activities:
      1. Provide a forum to gather information from the states and the industry regarding tools, policies and resolutions to assist with common filing issues. Provide oversight in evaluating product filing efficiency issues for state insurance regulators and the industry, particularly with regard to uniformity. Evaluate the state survey results compiled in 2020 regarding the usefulness of existing tools and potential new tools, and propose a plan to make improvements.
      2. Use SERFF data to develop, refine, implement, collect and distribute common filing metrics that provide a tool to measure the success of the speed to market modernization efforts as measured by nationwide and individual state speed to market compliance, with an emphasis on monitoring state regulatory and insurer responsibilities for speed to market for insurance products.
      3. Facilitate proposed changes to the product coding matrices (PCMs) and the uniform transmittal document (UTD) on an annual basis, including the review, approval and notification of changes. Monitor, assist with and report on state implementation of any PCM changes.
      4. Facilitate the review and revision of the *Product Filing Review Handbook*, which contains an overview of all of the operational efficiency tools and describes best practices for industry filers and state reviewers with regard to the rate and form filing and review process. Develop and implement a communication plan to inform states about the *Product Filing Review Handbook*.
   
   D. Provide direction to NAIC staff regarding SERFF functionality, implementation, development and enhancements. Direct NAIC staff to provide individual state speed to market reports to each commissioner at each national meeting. Receive periodic reports from NAIC staff, as needed.
   
   E. Conduct the following activities as desired by the Interstate Insurance Product Regulation Commission (Compact):
      1. Provide support to the Compact as the speed to market vehicle for asset-based insurance products, encouraging the states’ participation in, and the industry’s usage of, the Compact.
      2. Receive periodic reports from the Compact, as needed.

**NAIC Support Staff: Scott Morris/Denise Matthews**

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The Innovation and Technology (EX) Task Force met Oct. 15, 2020. The following Task Force members participated: Jon Godfread, Chair, Chris Aufenthie and Johnny Palsgraaf (ND); Elizabeth Kelleher Dwyer, Vice Chair, and Matt Gendron (RI); Lori K. Wing-Heier and Chris Murray (AK); Jim L. Ridling represented by Gina Hunt (AL); Alan McClain and Letty Hardee (AR); Evan G. Daniels represented by Tom Zuppan (AZ); Ricardo Lara represented by Lucy Jabourian (CA); Michael Conway represented by Peg Brown (CO); Andrew N. Mais, Joshua Hershman and George Bradner (CT); David Altmaier represented by Robert Estridge (FL); Colin M. Hayashida (HI); Doug Ommen, Travis Grassel and Andria Seip (IA); Dean L. Cameron represented by Weston Trexler (ID); Vicki Schmidt, LeAnn Crow and Tate Flott (KS); Sharon P. Clark (KY); James J. Donelon represented by Tom Travis and Rich Piazza (LA); Gary Anderson and Rachel M. Davison (MA); Kathleen A. Birrane (MD); Anita G. Fox represented by Chad Arnold (MI); Grace Arnold represented by Tammy Lohmann (MN); Chlora Lindley-Myers represented by Cynthia Amann (MO); Mike Causey represented by Kathy Shortt (NC); Bruce R. Ramge (NE); Chris Nicolopoulos represented by Christian Citarella and Emily Doherty (NH); Marlene Caride represented by Carl Sorenson and Randall Currier (NJ); Barbara D. Richardson (NV); Tynesia Dorsey represented by Matthew Walsh, Amanda Baird and Lori Barron (OH); Andrew R. Stolfi represented by Aaron Teverbaugh (OR); Jessica K. Altman and Michael Humphreys (PA); Raymond G. Farmer represented by Daniel Morris (SC); Larry D. Deiter (SD); Hodgen Mainda represented by David Combs and Rachel Jade-Rice (TN); Kent Sullivan represented by Doug Slape and Michael Nored (TX); Michael S. Pieciak represented by Emily Brown (VT); Mike Kreidler and Michael Bryant (WA); and Mark Afable and Nathan Houdek (WI).

1. **Adopted its Summer National Meeting Minutes**

Commissioner Mais made a motion, seconded by Commissioner Ommen, to adopt the Task Force’s Aug. 7 minutes (see NAIC Proceedings – Summer 2020, Innovation and Technology (EX) Task Force) The motion passed.

2. **Discussed the Sept. 17 Anti-Rebating Draft Model Law Amendments**

Commissioner Godfread provided background regarding the Unfair Trade Practices Act (#880) and the draft amendments for Section H. He said Superintendent Dwyer will walk through it section by section and note comments received; which were accepted, modified and accepted, or rejected for the latest draft; and which comments were not understood by the drafters. He said she will note a few areas where she feels there needs to be discussion by the Task Force; however, if the Task Force members do not object to the proposed language as she walks through it, it will be accepted and included as a part of the next draft. He said there have been two formal comment periods, and the dispensation of those suggestions received will be included in Superintendent Dwyer’s walk through.

   a. **Discussed Comments Accepted, Revised, or Not Accepted Without Further Discussion in the Sept. 17 Anti-Rebating Draft Model Law Amendments**

   Superintendent Dwyer provided a quick level set regarding the rebating issue. She said this is not a new issue, and the intention is to get consensus on some language that gets closer to providing consumer protection while removing impediments to innovation that provides consumer benefit. She said 17 comment letters were received during the last comment period. She said each comment was considered, and a decision was made by the drafting team—made up of RI and ND staff—as to whether to accept, modify or reject the suggestion or if more information was needed. She reviewed the following key points related to the comments and the most recent draft language:

   - The numbering in the draft still needs to be corrected, and that will be done with the next draft.
   - Twelve states commented on prior drafts. CA filed comments related to Proposition 103 having changed rebating in CA, making it and possibly one other state unique from other states. Superintendent Dwyer pointed out that this may result in their needing to abstain during a vote related to adopting revised language.
   - Many commenters preferred the “value-added” language that was changed in the previous draft, so that was put back in this latest draft.
   - H(2)(e)(1): Changed “specified” to “referenced” as requested in a comment letter, as it did not seem to have an adverse effect on the model.
• H(2)(e)(1)(b): Use of the words “primarily intended” was noted as a concern. Superintendent Dwyer said the drafting team considered the word “designed” as opposed to “intended” to address the concern. Mr. Bryant said Washington has a concern with “primarily intended,” as it puts the state insurance regulator in the position of having to read minds in order to know what was “intended.” He said “designed” works better, as it is something that is demonstrable and does not require state insurance regulators to have to engage in that analysis. Director Ramge asked if it would be better if it just read, “[s]atisfies one or more of the following.” Commissioner Birrane said she is concerned about taking out those words because it becomes an absolute, and she said she prefers “primarily designed.” Commissioner Ommen said “designed” is a higher standard for trying to comply, so if it is left out, it would mean “to no other purpose.” He said “primarily designed” seems to lower the standard just a bit. Director Wing-Heier agreed with Commissioner Ommen, and she said she prefers using the term “designed.” Mr. Trexler agreed. Having heard the discussion, Superintendent Dwyer said the next draft would reflect “primarily designed” for the next round of comments.

• Superintendent Dwyer said a comment letter suggested that there be a requirement that all incentives be included in the policy itself. She said that was not included because one of the purposes behind clarifying this language is to recognize that the process to change policy language, including language related to not being able to change it during the policy period, is an impediment to the innovation we are seeking to remove. She asked if anyone wanted to comment on that point, but there were no comments from the attending state insurance regulators.

• Superintendent Dwyer said items related to “education and information” received some comments, and the drafters chose to accept suggested language saying, “provide education about liability risks or risks of loss to persons or property” for H(2)(e)(ii)(III).

• A request to delete the word “representatives” from H(2)(e)(1) was not accepted, as the drafting team thought that would imply no accountability on the part of the insurer or producer for the actions of their third-party representatives, and there is a strong belief that they do. Superintendent Dwyer said if that was not the intent of the request, the issue should be clarified and brought forward again. She said there was also a request to take out the word “the” before the words “insurance coverage” in H(2)(e)(1)(a) that was not accepted, as the drafting team thought it changed the meaning and was therefore not appropriate.

• Superintendent Dwyer said there were quite a few comments on H(2)(e)(1)(b)(V) regarding what is meant by “financial wellness.” The drafting team decided that it would best meet the combined intent of the comments to split this into two items, and it was changed to what is in the draft. Mr. Trexler asked for clarification regarding whether the intent is to allow the insurer or producer to provide financial planning services without cost. Superintendent Dwyer said that is correct; however, it would have to relate to the insurance coverage. Mr. Trexler said he would give that additional consideration.

• Superintendent Dwyer explained the decision to go with the term “client,” define it in H(2)(e)(1)(b)(VIII), and use it throughout in place of “insured” given the questions around that term. There was a suggestion to include the risk of disability in this item that was also accepted. Commissioner Ommen asked if this item was not included in H(2)(e)(1)(b)(V). Superintendent Dwyer said she agreed that several things are captured in other parts of this language, but they were requested by industry to hopefully avoid inconsistent interpretation.

• Superintendent Dwyer said there was a lot of discussion about H(2)(e)(1)(b)(IX) related to concern about opening this up to things that have happened in title insurance and with lender-placed insurers where the insurance contract is held by the larger entity and somebody else is paying the premium. She said this was left in because assisting with the administration of benefits can offer value to the consumer.

• The language in H(2)(e)(2) is intended to clarify that the insurer or producer is responsible for providing contact information to assist the client with questions regarding the product or service. Superintendent Dwyer said H(2)(e)(4) was rewritten to clarify that while this does not have to be filed with the department of insurance (DOI) every time, the insurer or producer must have that information. Commissioner Clark suggested that the word “of” in the last line should be changed to “by” the DOI.

• Superintendent Dwyer said there were multiple requests to delete the word “fair,” but the drafting team thought that there is a common understanding of what it means and that it is important to the intent, so it was left in.

• Superintendent Dwyer explained that H(2)(e)(5), regarding allowing the insurer or producer to conduct a pilot or test program, is for those situations where the insurer or producer needs to gather data in the case of having a good faith belief that it will meet the criteria for a value-added product or service. Mr. Bradner said if it is filed, it becomes a public record, and that may not be appropriate. Superintendent Dwyer said she did not think it had to actually be a filing but could be a conversation with the DOI. Mr. Bradner agreed to draft some language that may better capture the intent. Mr. Nored suggested adding, “if permitted by state law and approved under those application procedures” to clarify that this is not intended to be creating an insurtech “sandbox” or anything along the lines of sandbox legislation. Director Ramge said it is important to include language that clarifies that this will not be included in the
System for Electronic Rate and Form Filing (SERFF) filing process. He pointed out that if it is offered by a producer, they would not have the ability to make such a filing. Superintendent Dwyer said we would include the suggestion made by Texas in the next draft to clarify that this is not necessarily expected to be a formal “filing.”

- There were suggestions to delete H(2)(e)(6), but the drafting team believed that the cost should be within some sort of reasonableness standard. The size of the client was given some thought, but the drafting team did not want to get into a lender-placed situation.
- Mr. Currier suggested changing the language in H(2)(f)(1) to say, “….does not exceed an amount determined to be reasonable by the commissioner” because it is what the commissioner finds reasonable, not an amount considered to be reasonable. Superintendent Dwyer asked Commissioner Mais, who first offered the originally proposed language, if he were amenable to that change. He said he would not object to it.
- Superintendent Dwyer noted that Director Ramge’s drafting note suggestion was added.
- For consistency, it was proposed that the word “person” be changed to “client” in H(2)(f)(1). That change was accepted.
- In regard to gifts and raffles, the drafting team thought each state could determine that through statute or regulation, and the drafting note provides for that.
- Superintendent Dwyer said some commenters wanted the section on conducting raffles to be eliminated, but this has come up often and therefore was considered something that needed to be addressed.
- The section on using the word “free” in advertisements, previously labeled (g), was changed to H(3) because that section stands on its own. Superintendent Dwyer said there were suggestions that this was not necessary, but the drafters felt it was. Commissioner Clark agreed that it should be included.

Mr. Aufenthie said there were some concerns expressed related to section H(2)(f) potentially creating an unlevel playing field for producers in terms of ability to compete. He said this type of thing has been allowed for a long time, and it has not seemed to have caused that type of problem. Superintendent Dwyer said she has not seen an example of it being a problem, but she asked for comments regarding this section. Commissioner Richardson said she made this comment, but she is not sure it needs to be completely removed. She said this can be a factor depending on how your producer group is set up, particularly if it is made up of a lot of independent producers. She said if that is the case, you are more likely to experience issues, but she said it could be managed by setting the amount as suggested in the drafting note. Superintendent Dwyer said that is the reason it was put in, allowing it to be at the discretion of the commissioner. She said if the language can be improved, that would definitely be considered.

Denise Matthews (NAIC) said the Texas DOI provided comments related to considering some definitions for further clarification. Superintendent Dwyer said this could be discussed after this meeting and Mr. Nored said he would be happy to discuss this offline.

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

Superintendent Dwyer said if any other states want to provide additional information or comments, they would be welcome. She said the drafting team will send out another draft for comment based on this discussion.

3. Discussed Other Matters

Commissioner Godfread said the NAIC is getting close to being able to publish the Cybersecurity Supplemental Data Report. He said it will be sent to the Task Force members and interested state insurance regulators and parties as soon as it is final. He also said consistent with the Task Force charge to monitor technology developments and develop regulatory guidance as appropriate, ensuring that regulation does not impede or unnecessarily create obstacles to necessary and consumer beneficial innovations made possible by technology being implemented and based on the extraordinary circumstances we are all facing as a result of COVID-19, he asked NAIC staff to send out a Request for Information (RFI) to interested parties. The RFI asks interested parties to provide information to the Task Force related to specific “regulatory relief” or “regulatory accommodations” offered by states as a result of the COVID-19 pandemic that it would recommend be continued or made permanent related to innovation and technology. Commissioner Godfread said it asks if there was some type of regulatory relief or accommodation offered or if there continues to be a law, regulation or regulatory guidance, or established practice in place that prohibits or limits insurers or producers from implementing or using newer technologies, data, methods or processes that are now necessary in order to continue to serve customers and maintain operations. He said he asked them, if applicable and possible, to identify the law, regulation or practice that previously or continues to be an obstacle, impediment or challenge to implementing what was and is necessary as a result of the COVID-19 pandemic and related implications. He said the idea is to
get information that will help the Task Force gain an understanding of current and/or prior roadblocks to innovative products and services made possible through technology and data. He said the request is to submit information to NAIC staff by Nov. 4 so it can be compiled and a summary can be provided to the Task Force members for discussion during the Fall National Meeting on Dec. 4.

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