The Big Data (EX) Working Group of the Innovation and Technology (EX) Task Force met in Austin, TX, Dec. 7, 2019. The following Working Group members participated: Doug Ommen, Chair (IA); Elizabeth Kelleher Dwyer, Vice Chair, represented by Matt Gendron (RI); George Bradner and Wanchin Chou (CT); Stephen C. Taylor and Sharon Shipp (DC); Frank Pyle (DE); Sandra Starnes (FL); Robert Muriel and Judy Mottar (IL); Rich Piazza (LA); Robert Baron (MD); Timothy Schott (ME); Karen Dennis (MI); Phil Vigliaturo (MN); Angela Nelson (MO); Christian Citarella (NH); Seong-min Eom (NJ); Jillian Froment (OH); Andrew Stolfi and TK Keen (OR); Michael McKenney and Shannen Logue (PA); Kendall Buchanan (SC); Rachel Cloyd and J’ne Byckovski (TX); Tomasz Serbinowski (UT); and Christina Rouleau (VT).

1. Adopted its Oct. 7 Minutes

The Working Group met Oct. 7 and took the following action: 1) adopted its Summer National Meeting minutes; and 2) discussed the use of big data in fraud detection and claim settlement.

Mr. Bradner made a motion, seconded by Ms. Nelson, to adopt the Working Group’s Oct. 7 minutes (Attachment One-A). The motion passed unanimously.

2. Discussed the Use of Big Data in Fraud Detection and Claim Settlement

Commissioner Ommen said the Working Group heard a presentation at the Summer National Meeting from Kevin Rawlins (Insurance Services Office—ISO) about ISO’s ClaimSearch and a presentation from Alan Haskins (National Insurance Crime Bureau—NICB) about NICB’s fraud detection services. Commissioner Ommen said the Working Group also heard a presentation during its Oct. 7 conference call from Carlos Martins (ISO) about ISO’s claims solutions.

Commissioner Ommen reviewed the three charges of the Working Group. He said the fraud detection and claims settlement practices discussed by the Working Group are subject to his regulatory jurisdiction under both Iowa’s unfair trade law and Iowa’s unfair claim settlement practices provisions, which are based on the NAIC Unfair Claims Settlement Practices Act (#900). He asked if the Working Group members have any observations about the adequacy of the current state insurance regulatory framework used to oversee the use of big data in fraud detection and claim settlement.

Ms. Nelson said she has concerns about the use of non-insurance data in fraud detection models because consumers may not know data about them is being used and how to correct inaccurate data. She said this concern is heightened with the use of third-party vendors because state insurance regulators may have challenges with access to information of third-party vendors.

Mr. McKenney said the presentations from ISO suggested there is not a lot of oversight by insurers.

Mr. Baron said the Maryland Insurance Administration would hold the licensee accountable, similar to how insurers are held accountable for the action of independent adjusters who have been hired.

Birny Birnbaum (Center for Economic Justice—CEJ) said there is a need for additional oversight of third-party vendors, which he believes are operating as advisory organizations. He said state insurance regulators should review whether an insurer’s practices result in disparate impact and should require insurers to disclose to consumers what third-party data and algorithms are being used.

Peter Kochenburger (University of Connecticut School of Law) said even if the states have regulatory authority under unfair trade laws, consumers need to know what data is being used because the accuracy of data can only be determined by the consumer. He said similar protections found in the federal Fair Credit Reporting Act should be applied to the use of data for fraud detection and claim settlement.

Commissioner Ommen said he would hold the insurer responsible for validating the accuracy of the data and model outputs.

Mr. Gendron said state insurance regulators need more detail on how insurers ensure the accuracy of data being used.
Mr. Bradner agreed and said insurers’ use of data from third-party vendors and how insurers validate the accuracy of this data warrants additional discussion.

3. **Received a Report from the Casualty Actuarial and Statistical (C) Task Force**

Mr. Piazza said the Casualty Actuarial and Statistical (C) Task Force has the following three charges to coordinate with the Big Data (EX) Working Group: 1) facilitate training and sharing of expertise on predictive analytics; 2) draft guidance for the review of state rate filings based on complex predictive models; and 3) draft changes to the *Product Filing Review Handbook* to include best practices for review of predictive models and analytics filed by insurers to justify rates.

Regarding the first charge, Mr. Piazza said the Task Force conducts monthly public education webinars on rate filings and regulator-to-regulator conference calls on specific rate filings of concern. He said the Task Force’s public calls since the Summer National Meeting addressed neural network, natural language processing, analytics and actual data-mining, and the open source model “R” and predictive analytics.

Regarding the two other charges, Mr. Piazza said the Task Force exposed the most recent draft of the regulatory review of predictive modeling white paper on Oct. 15 for a public comment period ending Nov. 22. The Task Force received comments from 11 interested parties and is beginning its review of the comments.

4. **Received a Report from the Accelerated Underwriting (A) Working Group**

Director Muriel said the Accelerated Underwriting (A) Working Group met Oct. 2 to review a work plan for accomplishing its charge, which is to “consider the use of external data and data analytics in accelerated life underwriting, including consideration of the ongoing work of the Life Actuarial (A) Task Force on the issue and, if appropriate, drafting guidance for the states.” He said the work plan contemplates three general phases: 1) gather information; identify issues and the best ways to address them (white paper, model bulletin, model law or something else); and 3) develop a work product by the 2020 Fall National Meeting.

5. **Received an Update on NAIC Technical and Non-Technical Rate Review Trainings**

Kris DeFrain (NAIC) said the NAIC has been sponsoring predictive analytics training since 2017 through what is called the “Book Club” of the Casualty Actuarial and Statistical (C) Task Force. She said the topics presented at the “Book Club” are mostly focused on the review of predictive analytics in property/casualty (P/C) rate filings. She said the NAIC is developing non-technical and technical training. The non-technical training will be provided to rate filing reviewers and market conduct examiners and focus on how to ensure vital information is contained in a rate filing, how to evaluate rate classes for unfair discrimination and understanding when additional actuarial assistance may be needed.

Ms. DeFrain said this training will be conducted after the Task Force completes its white paper toward the end of this year or early in 2020. She said the technical training will be conducted by the NAIC’s consultant, Dorothy Andrews (Actuarial & Analytics Consortium LLC), and will focus on training actuaries and statisticians. Ms. DeFrain said the technical training will be presented through on-demand modules and will focus on data inputs, mathematical distributions and statistical techniques.

In response to Commissioner Ommen’s question about training addressing the use of models in fraud detection, Ms. DeFrain said the training will focus on rate models but could be expanded in the future to include the assessment of models used for fraud detection and claim settlement.

Mr. Vigliaturo said the technical training is very good, and each session takes approximately 12 hours to complete. He said the courses will increase the knowledge of participants but will not necessarily lead to a quicker review of rate filings. He suggested the training be added to the list of courses for the NAIC’s Insurance Regulator Professional Designation Program.

6. **Heard a Presentation from the CEJ on the Role of Advisory Organizations**

Mr. Birnbaum provided a presentation on the history of advisory organizations, current regulatory requirements for advisory organizations and third-party vendors that he believes are operating as unlicensed advisory organizations. He said the federal McCarran-Ferguson Act provides insurers with a limited exemption from federal antitrust laws to the extent that insurance is regulated by the states. Without this exemption from antitrust laws, he said insurers would not be able to use advisory organizations to collect and compile historical information for ratemaking purposes. He said the states have oversight of these activities through the licensing of advisory organizations.

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In the late 1980s, Mr. Birnbaum said a number of state attorneys general brought legal action against the ISO, alleging its involvement in anticompetitive activities. He said the ISO settled this litigation by changing its corporate structure and going to loss costs in states for lines of insurance where it had not already done so.

By the early 1990s, Mr. Birnbaum said more states had enacted legislation to require organizations to file prospective loss costs instead of fully developed rates. He said rating organizations became more widely referred to as advisory organizations, with state insurance regulators having oversight of data collected and algorithms used for loss costs. He said the states conduct advisory organization examinations to determine that an advisory organization is performing its permitted regulated functions in a manner consistent with state rating laws and in a manner that results in accurate and compliant products or services for its subscribing companies.

Mr. Birnbaum said new third-party vendors engaged in collecting decision marking are not licensed as advisory organizations. He said the following activities raise antitrust concerns that require state supervision of organizations exempt from federal antitrust laws: 1) collecting data from insurers; 2) adding additional data to insurer data; and 3) analyzing the data to producer pricing recommendations in the form of prospective loss costs or risk classification.

Mr. Birnbaum questioned what the functional difference is between ISO, which is licensed as an advisory organization and produces personal auto risk classification relativities and third-party vendors, such as TransUnion, which provide credit scores, criminal history scores or vehicle scores. He said there is a need to create the accountability and regulatory oversight of vendors of big data algorithms as envisioned in antitrust laws and advisory organization statutes. He said this may mean not only bringing regulatory oversight to third-party algorithm vendors, but also updating advisory organization requirements and procedures for the era of big data.

Commissioner Ommen said this is an important issue to which the Working Group should give further consideration.

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