

OECD'S ARTIFICIAL INTELLIGENCE PRINCIPLES SUMMARY

COMMENTS

American Council of Life Insurers (ACLI)

American Property Casualty Insurance Association (APCIA)

BlueCross BlueShield Association (BCBS) / America's Health Insurance Plans (AHIP)

Center for Economic Justice (CEJ)

Iowa Insurance Division

Lemonade Insurance Company

Maryland Insurance Administration

Minnesota Department of Commerce

Nevada Division of Insurance

Ohio Department of Insurance

Pennsylvania Insurance Department

Texas Department of Insurance



October 14, 2019

Commissioner Jon Godfread
North Dakota Insurance Department
Chair, NAIC Artificial Intelligence (EX) Working Group
Via email to dmatthews@naic.org

Re: Exposed Questions for Consideration on OECD Artificial Intelligence Principles

Dear Commissioner Godfread:

I am writing on behalf of the American Council of Life Insurers (ACLI)¹ in response to the Artificial Intelligence (EX) Working Group's questions regarding the Organisation for Economic Co-operation and Development (OECD) Artificial Intelligence Principles. ACLI commends the NAIC and the Working Group for devoting attention to artificial intelligence (AI) and supports its charge to review AI's impact on consumers and to develop meaningful guidance for the insurance industry.

ACLI believes AI has the potential to bring significant changes to the life insurance industry, and it is our hope that these transformations will build and enhance relationships with consumers and lead to greater financial security for individuals and families. As with any new innovation, however, ACLI recognizes that AI presents risks and questions that industry stakeholders should thoughtfully consider and address. We believe that developing a shared set of high-level, insurance-specific principles will be a valuable exercise for the Working Group and that the principles themselves will help insurers as they increasingly begin to implement and navigate this technology. **However, because this is such a technical, immersive topic, we request that the Working Group spends its first few months studying and hearing from experts on AI and machine learning before developing and, particularly, before finalizing AI principles for insurance. We also question whether the OECD AI Principles are the best starting point for a discussion specific to insurance.**

We recognize the Working Group would like to have recommendations for the Innovation and Technology (EX) Task Force at the 2020 Summer National Meeting, and we believe that objective can still be achieved even with our suggested level-setting period. Taking time to first learn about AI in greater depth, defining key terms, will, in our view, lead to a better, shared understanding of AI; inform more thoughtful, functional principles; and lay important groundwork for future AI discussions at the NAIC. At the same time, our members did not want to miss an opportunity to be a part of the conversation on AI and the OECD Principles. Below we provide high-level comments on the principles,

¹ The American Council of Life Insurers (ACLI) advocates on behalf of 280 member companies dedicated to providing products and services that promote consumers' financial and retirement security. 90 million American families depend on our members for life insurance, annuities, retirement plans, long-term care insurance, disability income insurance, reinsurance, dental and vision, and other supplemental benefits. ACLI represents member companies in state, federal, and international forums for public policy that supports the industry marketplace and the families that rely on life insurers' products for peace of mind. ACLI members represent 95 percent of industry assets in the United States. Learn more at www.acli.com.

first addressing Principles 1.1 and 1.2 and then the last three. We believe our feedback adequately responds to the four questions posed by the Working Group.

Comments on Principles 1.1 & 1.2

The OECD AI Principles, understandably, are not the best fit for the life insurance industry—they were developed among many jurisdictions of AI stakeholders around the world, representing multiple disciplines and interests. Most guidance in the first two principles, concerning inclusive growth and human-centered values, is beyond the scope of our industry and, we believe, would be inappropriate for insurance-based principles. Big concepts such as human rights, social justice, labor rights, etc., while important in certain contexts, do not reflect the unique, specific responsibilities of life insurers and the obligations they have to consumers and regulators.

Life insurers are dedicated to empowering consumers with tools that provide them and their loved ones with long-term financial and retirement security, the cornerstones of our industry. We recommend that AI principles for insurers emphasize how this technology can help consumers and address longstanding challenges insurers have faced trying to bridge the protection gap. The potential consumer benefits of AI include, but are not limited to, enhancing efficiencies, such as reducing the time from application to policy issue; learning, anticipating, and tailoring products and services to consumers' needs; increasing touch points with consumers to meet them where they are; and improving access to consumers not traditionally reached.

ACLI strongly agrees that life insurers “should respect the rule of law” as stated in Principle 1.2(a). And we believe principles put forth by this group should emphasize that insurers are governed by a robust legal framework that, among other things, requires insurers to treat consumers consistently under applicable laws and regulations. For example, life insurers must be able to demonstrate that they treat similarly situated applicants the same, based on sound actuarial principles and actual or reasonably anticipated experience.

Finally, we suggest defining and specifying key terms as a way to add clarity to our principles, their aim, and the intended audience. We recommend that the Working Group collaborates with interested parties to define or agree on a practical definition of “artificial intelligence.” If the Working Group moves forward with the OECD AI Principles, we recommend specifying who “AI actors” are—we assume for our purposes they are insurers—and defining what “state of art” means or cutting the term altogether.

Comments on Principles 1.3, 1.4, & 1.5

ACLI considers transparency, security/risk management, and accountability critical to any productive discussion about life insurers' responsibilities regarding AI. Life insurers have a long history of acting with appropriate transparency and accountability to consumers and regulators as well as employing risk management strategies that include consumer privacy and data security measures. Further, as indicated above, insurers have been and continue to be subject to well-defined federal and state laws and regulations that govern and set parameters around these specific issues of transparency, security, and accountability. We believe these concepts, in some capacity, should be included in insurance-specific AI recommendations as long as the principles acknowledge the strong legal framework under

which insurers already operate. While technology may evolve, insurers' obligations under the law and their commitment to high standards and consumer protections do not. For these reasons, ACLI does not believe additional oversight or new laws or regulations are necessary at this time.

Conclusion

Thank you again for allowing us to comment on the OECD AI Principles. We encourage the Working Group to take additional time to facilitate thoughtful, informed conversations on AI before committing to any principles that will serve as a basis for impactful, future work on this issue. The industry may be better served by other AI principles that do not require such a departure from the original document, or perhaps the Working Group will find that it is best to start from the beginning and draft our own principles. Whatever is ultimately decided, ACLI will work diligently with the NAIC to ensure AI principles for our industry are appropriate and useful for future endeavors. Please feel free to contact me if you have questions or would like additional information.

Sincerely,

A handwritten signature in black ink that reads "Taylor Walker". The signature is written in a cursive, flowing style.

Taylor Walker

Senior Policy Analyst, Policy Development
202-624-2465 taylorwalker@acll.com

October 11, 2019

Commissioner Jon Godfread, Chair
Commissioner Mark V. Afable, Vice Chair
Artificial Intelligence (EX) Working Group
NAIC Central Office
1100 Walnut, Suite 1500
Kansas City, MO 64106-2197

Attn: Denise Matthews, Director, Data Coordination and Statistical Analysis

VIA Electronic Mail: dmatthews@naic.org

RE: OECD's Artificial Intelligence Principles

Dear Commissioner Godfread and Commissioner Afable:

The American Property Casualty Insurance Association (APCIA)¹ appreciates the opportunity to provide feedback with regards to the National Association of Insurance Commissioners' (NAIC) Artificial Intelligence Working Group's (Working Group) use of the Organisation for Economic Co-operation and Development's (OECD) Artificial Intelligence Principles (OECD AI Principles) as the basis for insurance focused artificial intelligence (AI) guidance. We applaud the Working Group's objective to create consistent over-arching guidance for NAIC Committee work that involves AI issues. Our comments to the Working Group's four specific questions are included below.

Are the Principles put forward by the OECD the right ones for the insurance industry? Is anything missing?

Consistency in regulatory expectations and demonstration of adherence to the guidance, domestically and globally, is an important objective. Using the OECD AI Principles as the starting point for the NAIC guidance promotes this objective while respecting unique insurance applications. The OECD AI Principles are meant for a broad and diverse audience, therefore, it contains some concepts and ideas that should be narrowed from an insurance perspective. Likewise, there are some areas that should be expanded on. For instance, the principles should balance the need for transparency with the need to protect insurer confidential information. Importantly, the principles should also recognize the existing regulatory framework and unique goals of insurance regulation, including protections that already exist to: prevent unfair trade practices; monitor insurer solvency; and prohibit unfair discrimination.

¹ Representing nearly 60 percent of the U.S. property casualty insurance market, the American Property Casualty Insurance Association (APCIA) promotes and protects the viability of private competition for the benefit of consumers and insurers. APCIA represents the broadest cross-section of home, auto, and business insurers of any national trade association. APCIA members represent all sizes, structures, and regions, protecting families, communities, and businesses in the U.S. and across the globe.

Are the Principles consistent with state laws and regulations related to general and specific consumer protections and insurance regulatory requirements?

Since, the guidance is intended to be used by NAIC Committees considering specific AI applications, we respectfully urge the Working Group to draft the guidance so that it encourage regulators to look to the flexibility of existing laws and regulations rather establishing new regulations. Importantly, the guidance must reinforce that the insurance standard is unfair discrimination. This is a long-standing foundation of the insurance regulatory environment, because insurance, by its very nature, discriminates based on risk of loss. Insurers may discriminate so long as they do not unfairly discriminate using impermissible factors as established by law. The NAIC's AI principles should be mindful that AI is a tool and while guidance and guardrails around its use are important, the principles should not produce new regulations.

Are there additional ethical issues related to AI that are not covered by these Principles?

As drafted the OECD principles are broad enough to cover a wide range of ethical issues. However, the Working Group may consider focusing the OECD's all-industry perspective and more narrowly address unfair non-discriminatory access to insurance and treatment of policyholders as ethical goals of the insurance industry.

How might these Principles be worded differently or modified to better serve the insurance vertical while staying at the over-arching umbrella level?

APCIA respectfully recommends incorporating an introductory paragraph that identifies the intent of the NAIC guidance, which we understand is to provide for a consistent set of AI guiding principles to assist different NAIC workstreams that may look at specific uses of AI.

In addition, we offer the following preliminary suggestions for your consideration:

1.1. ~~Inclusive~~ Promote growth, ~~sustainable~~ development and well-being

Stakeholders should proactively engage in responsible stewardship of trustworthy AI in pursuit of beneficial outcomes for ~~people and the planet~~ consumers, and society, such as augmenting human capabilities and enhancing creativity, improving societal resilience, and improving access to insurance in accord with the unfair discrimination principles identified by the robust insurance regulatory requirements ~~advancing inclusion of underrepresented populations, reducing economic, social, gender and other inequalities, and protecting natural environments~~, thus ~~invigorating inclusive~~ promoting growth, ~~sustainable~~ development and well-being.

1.2. Human-centered values and fairness

a) AI actors should respect the rule of law, human rights and democratic values, throughout the AI system lifecycle while taking into account the nature and purpose of insurance.

~~B) AI actors should respect key insurance principles that include prohibition of unfair discrimination, promotion of insurer solvency, and promotion of fair access to insurance. These include freedom, dignity and autonomy, privacy and data protection, non-discrimination and equality, diversity, fairness, social justice, and internationally recognised labour rights.~~

~~c) To this end, AI actors should implement mechanisms and safeguards, such as capacity for human determination~~ ongoing human monitoring and intervention/decision making, that are appropriate to the context and consistent with the state of art.

1.3. Transparency ~~and explainability~~

AI Actors should commit to transparency and responsible disclosure regarding AI systems while maintaining the ability to protect confidentiality of proprietary data and adherence to individual U.S. State regulations in all states where AI is deployed. To this end, they should provide meaningful information, appropriate to the context, and consistent with the state of art:

- i. to foster a general understanding of AI systems,
- ii. when appropriate (i.e. insurance related decision making), to make stakeholders aware of their interactions with AI systems, including in the workplace,
- iii. to enable those affected by an AI system to understand the outcome, and,
- iv. to enable those adversely affected by an AI system to challenge ~~theits~~ outcome based on plain and easy to understand information on the factors, and the logic that served as the basis for the prediction, recommendation or decision.

1.4. Robustness, security and safety

a) AI systems should be robust, secure and safe throughout their entire lifecycle so that, in conditions of normal use, foreseeable use or misuse, or other adverse conditions, they function appropriately and do not pose unreasonable safety risk.

b) To this end, AI actors should ensure traceability, including in relation to datasets, processes and decisions made during the AI system lifecycle, to enable analysis of the AI system's outcomes and responses to inquiry, appropriate to the context and consistent with the state of art.

c) AI actors should, based on their roles, the context, and their ability to act, apply a systematic risk management approach to each phase of the AI system lifecycle on a continuous basis to address risks related to AI systems, including privacy, digital security, ~~safety~~ and unfair bias.

1.5. Accountability

AI actors should be accountable for the proper functioning of AI systems and for the respect of the above principles, based on their roles, the context, and consistent with ~~the state of art~~ industry standards.

Thank you for the opportunity to comment. If you have any questions or would like to discuss any of these recommendations further, please let us know. APCIA looks forward to collaborating with the Working Group on this interesting and evolving topic.

Respectfully submitted,

Angela Gleason



**BlueCross BlueShield
Association**

An Association of Independent
Blue Cross and Blue Shield Plans



America's Health
Insurance Plans

October 11, 2019

The Honorable Jon Godfread, Chair
The Honorable Mark Afable, Vice-Chair
Artificial Intelligence (EX) Working Group
National Association of Insurance Commissioners
444 North Capitol Street, NW
Suite 700
Washington, D.C. 20001-1512

Via email: Denise Matthews, dmatthews@naic.org

RE: BCBSA & AHIP Comments on OECD Artificial Intelligence (AI) Principles

Dear Commissioners Godfread and Afable:

The Blue Cross Blue Shield Association (BCBSA) and America's Health Insurance Plans (AHIP) appreciate the opportunity to provide comments on the Artificial Intelligence (AI) Principles adopted by the Organisation for Economic Co-operation and Development (OECD) and, more specifically, on the questions posed by the National Association of Insurance Commissioners' (NAIC) Artificial Intelligence (EX) Working Group about those Principles.

BCBSA is a national federation of 36 independent, community-based and locally operated Blue Cross and Blue Shield (BCBS) companies (Plans) that collectively provide healthcare coverage for one in three Americans. BCBSA's Blue Cross Blue Shield Axis[®] empowers BCBS Plans, consumers, employers and healthcare professionals with data-driven cost and quality insights to better inform and enable consumer choice and transparency.

AHIP is the national association whose members provide coverage for healthcare and related services, offering health and wellness products in every insurance market, in every state, to individuals, families, small and large businesses as well as Medicaid and Medicare beneficiaries.

As representatives of major health insurers with deep experience in the transformative powers of technology use in healthcare, we share your goals in exploring guiding principles around emerging technologies such as AI. However, for the health insurance marketplace, we believe it is critical for the NAIC to understand the existing landscape of AI policymaking and to proceed carefully so as not to create unintended consequences that would limit the full benefits of AI and deviate from current international and U.S. policymaking. To this end, following are our general and specific responses to the questions posed by the EX Working Group around the OECD's AI Principles.

General Recommendation: The NAIC is uniquely positioned to provide thought leadership to the states by helping them to understand AI implications in the insurance marketplace through the development of a toolkit or a white paper. This effort would help guide, standardize and support state actions around the use and implications of AI in developing state-specific policy objectives. Several states have recently created commissions to study the use of AI and its policy implications, and we expect more states to do so in the future.

Question: Are the Principles put forward by the OECD the right ones for the insurance industry? Is anything missing?

Answer:

- **OECD’s AI Principles are the “right ones” as AI is not insurance industry-specific technology.** The OECD’s AI Principles are broad by design due to the emerging nature of the technology and are appropriate for, and applicable to, many industries including insurance. As stated in the OECD’s “Background Information” section, the OECD Principles “focus on AI-specific issues and sets a standard that is implementable and sufficiently flexible to stand the test of time in this rapidly evolving field.” For instance, the Principles in Section 1, while broad, underscore the importance of implementing standards and consideration of privacy and security safeguards for AI systems. Also important, yet missing from the NAIC’s link to the OECD Principles, is Section 2, which makes recommendations to policymakers on national policies and international cooperation for trustworthy AI. Particularly notable is the OECD’s expressed concept of shaping and enabling policy environments for AI. In Section 2.3(b), the OECD states that “Governments should review and adapt, as appropriate, their policy and regulatory frameworks and assessment mechanisms as they apply to AI systems to encourage innovation and competition for trustworthy AI.” As discussed below, this policy statement is incorporated into current U.S. policymaking on AI and should be included in any guidance developed by the NAIC.
- **In addition to the OECD Principles, the NAIC should look to U.S.-specific policymaking for AI.** Since the beginning of 2019, the U.S. has issued several AI policy proposals, which the NAIC should also consider as guiding sources in developing principles and other recommendations on AI. The three main U.S.-specific AI policy documents released in 2019 include: the *White House Executive Order on Maintaining American Leadership in Artificial Intelligence*¹, the *White House National AI Research and Development Strategic Plan (June 2019 Update)*², and the National Institute of Standards and Technology’s (NIST’s) document entitled “*U.S. Leadership in AI: A Plan for Federal Engagement in Developing Technical Standards and Related Tools.*”³ The

¹ Found at: <https://www.whitehouse.gov/presidential-actions/executive-order-maintaining-american-leadership-artificial-intelligence/>

² Found at: <https://www.whitehouse.gov/wp-content/uploads/2019/06/National-AI-Research-and-Development-Strategic-Plan-2019-Update-June-2019.pdf>

³ Found at: https://www.nist.gov/sites/default/files/documents/2019/08/10/ai_standards_fedengagement_plan_9aug2019.pdf

central goals of U.S. AI policy include: 1) encouraging U.S. leadership and innovation in AI technology; 2) engaging in robust public-private partnerships; and 3) development and use of AI standards and related tools to advance reliable, robust and trustworthy AI. Specifically, the Executive Order states that “The United States must drive technological breakthroughs in AI” and “The United States must drive development of appropriate technical standards and reduce barriers to the safe testing and deployment of AI technologies.” We, therefore, caution the NAIC against incorporating AI principles from other countries, which are not directly applicable to, and have not been adopted by, the U.S. The NAIC also should not adopt principles that conflict with existing – or may conflict with future – U.S. policy objectives on AI. U.S. policymakers are in the early stages of crafting AI policy as well as developing standards. The NAIC should be careful not to get ahead of these efforts, particularly when AI is not a technology specific to the insurance industry.

Question: Are the Principles consistent with state laws and regulations related to general and specific consumer protections and insurance regulatory requirements?

Answer:

- **OECD Principles do not conflict with state laws and regulations.** The OECD AI Principles are broad enough not to conflict with these existing laws. State laws and regulations establishing consumer protections and insurance regulatory requirements will continue to apply when AI is used as a tool by an insurer for an insurance-related task.

Question: Are there additional ethical issues related to AI that are not covered by these Principles?

Answer:

- **The NAIC should not develop its own principles or standards on ethical issues related to AI, but instead support consistent standards developed at the international and national levels.** It is important to recognize that ethical principles may be different among countries.⁴ While there may be U.S.-specific ethical principles, which need to be incorporated into the OECD Principles, the appropriate U.S. body to develop those principles is NIST. In its recently released “Plan for Federal Engagement,” NIST outlines how it will be working to advocate for the U.S. perspective on AI with international standard-setting organizations such as International Organization for Standardization (ISO). The NAIC should closely follow NIST’s efforts and incorporate any additional ethical or other standards that NIST issues for use in the United States. The NAIC should not undertake to develop principles that deviate from those developed by the OECD, the White House or NIST.

⁴ See “Should a self-driving car kill the baby or the grandma? Depends on where you’re from,” Hao, K. MIT Technology Review (October 24, 2018), found at: <https://www.technologyreview.com/s/612341/a-global-ethics-study-aims-to-help-ai-solve-the-self-driving-trolley-problem/>, referencing “The Moral Machine experiment,” Awad, E., Dsouza, S., Kim, R., Schulz, J., Henrich, J., Shariff, A., Bonnefon, J. & Rahwan, I., *Nature* 563 59-64 (2018), found at: <https://doi.org/10.1038/s41586-018-0637-6>.

Question: How might these Principles be worded differently or modified to better serve the insurance vertical while staying at the overarching, umbrella level as discussed by the Working Group on its call on Sept. 5, 2019, understanding that issues related to defining terms and implementation are outside of scope at this time?

Answer:

- **No modification of OECD AI Principles language is needed.** The Principles should not be worded differently or modified from the OECD Principles. To do so would create inconsistencies and confusion leading to unintended consequences. Instead, the NAIC should focus on providing policy landscape and toolkits for the states to enable appropriate state activities around AI without creating additional barriers to innovation, interoperability and usability of AI-facilitated tools and systems.

We appreciate your consideration of our comments. We believe the work of the EX Working Group will be important in helping states understand the AI policy landscape as well as national and international standards. We stand ready to support the EX Working Group in its endeavors to educate states in support of national standards around AI deployment in the insurance industry.

If you have questions or want additional information, please contact BCBSA's Lauren Choi, Managing Director of Health IT Policy at lauren.choi@bcbsa.com or Jeremy Crandall, Managing Director of State Affairs at jeremy.crandall@bcbsa.com; or AHIP's Bob Ridgeway, Senior Government Relations Counsel at bridgeway@ahip.org.

Sincerely,



Kris Haltmeyer
Vice President
Legislative and Regulatory Policy
Blue Cross Blue Shield Association



Leanne Gassaway
Senior Vice President
State Affairs and Policy
American's Health Insurance Plans

Comments for the Center for Economic Justice
To the Artificial Intelligence (EX) Working Group
Insurance-Specific Principles for Artificial Intelligence
November 12, 2019

The Center for Economic Justice offers the following comments in response to the working group's request for comments on the applicability of the recently-adopted OECD's AI Principles to insurance.

Background

The OECD¹ “identifies five complementary values-based principles for the responsible stewardship of trustworthy AI:

- AI should benefit people and the planet by driving inclusive growth, sustainable development and well-being.
- AI systems should be designed in a way that respects the rule of law, human rights, democratic values and diversity, and they should include appropriate safeguards – for example, enabling human intervention where necessary – to ensure a fair and just society.
- There should be transparency and responsible disclosure around AI systems to ensure that people understand AI-based outcomes and can challenge them.
- AI systems must function in a robust, secure and safe way throughout their life cycles and potential risks should be continually assessed and managed.
- Organisations and individuals developing, deploying or operating AI systems should be held accountable for their proper functioning in line with the above principles.”

The Australian Government Department of Industry, Innovation and Science recently published, following public consultation, AI Ethics Principles:²

- Human, social and environmental wellbeing: Throughout their lifecycle, AI systems should benefit individuals, society and the environment.

¹ <http://www.oecd.org/going-digital/ai/principles/>

² <https://www.industry.gov.au/data-and-publications/building-australias-artificial-intelligence-capability/ai-ethics-framework/ai-ethics-principles>

- Human-centred values: Throughout their lifecycle, AI systems should respect human rights, diversity, and the autonomy of individuals.
- Fairness: Throughout their lifecycle, AI systems should be inclusive and accessible, and should not involve or result in unfair discrimination against individuals, communities or groups.
- Privacy protection and security: Throughout their lifecycle, AI systems should respect and uphold privacy rights and data protection, and ensure the security of data.
- Reliability and safety: Throughout their lifecycle, AI systems should reliably operate in accordance with their intended purpose.
- Transparency and explainability: There should be transparency and responsible disclosure to ensure people know when they are being significantly impacted by an AI system, and can find out when an AI system is engaging with them.
- Contestability: When an AI system significantly impacts a person, community, group or environment, there should be a timely process to allow people to challenge the use or output of the AI system.
- Accountability: Those responsible for the different phases of the AI system lifecycle should be identifiable and accountable for the outcomes of the AI systems, and human oversight of AI systems should be enabled.

The Australian AI principles are consistent with the OECD principles with Australia breaking out a few of the OECD principle into multiple principles and adding a principle for privacy protection and privacy rights.

Response to Questions

The OECD and Australian AI Principles are intended for general application and are appropriate for the insurance industry. The principles are also consistent with state laws and regulation – one of the OECD principles specifically references respect for the rule of law. The Australian principles are more complete than the OECD principles because of the Australian addition of the principle for privacy protection and privacy rights.

While the principles are relevant and applicable to the insurance sector, we believe it is useful and necessary to supplement the principles with insurance-specific guidance and terminology. CEJ suggests the following to supplement the OECD and Australian AI principles:

Reflecting the principles of Fairness; Human, Social and Environmental Wellbeing; and Human-Centered Values: **Cost-Based Pricing and Claim Settlement Practices.** Cost-based pricing and claims settlement means that prices and claims settlements reflect costs associated with the transfer of risk and do not reflect other considerations such as willingness to pay (e.g., price optimization) or willingness to accept a settlement (e.g., claims optimization).

Cost-based pricing and claim settlement practices is a foundational principle for insurance to protect insurer financial condition and provide proper price signals for investment risk/loss mitigation benefit (necessary for sustainable development) and to ensure fair treatment of consumers entering into contracts of adhesion.

Reflecting several of the general AI principles, **Appropriate Uses of Data and Algorithms**. Insurers have always utilized large data sets and developed algorithms for all phases of the insurance life-cycle. However, not all data and algorithms are appropriate for all insurance transactions. For example, while certain data and algorithms might be appropriate for anti-fraud or claims settlement, the same data and algorithms could be inappropriate – and inconsistent with the general AI principles – for marketing, underwriting or pricing.

Reflecting the principle for Human, Social and Environmental Well-Being, **Loss Prevention / Mitigation / Sustainability / Resilience** to ensure that AI enhances and does not undermine the critical loss prevention role and potential for insurance.

Reflecting the principles of Fairness; Human, Social and Environmental Wellbeing; and Human-Centered Values, **No Unfair Discrimination Based on Disparate Treatment or Resulting in Disparate Effect**. The NAIC Property and Casualty Model Rate and Policy Form Law Guideline deems discrimination on the basis of race, creed, national origin or religion of the insured unfair and it is prohibited.³ This type of unfair discrimination prohibition has always been understood to mean a prohibition against intentional discrimination on the basis of protected classes. In an era of insurers' use of a wide variety of non-insurance, third-party data sets and complex algorithms, the potential for proxy discrimination is far greater than before. There have been numerous examples of algorithms reflecting and perpetuating historic discrimination – even when there was no intentional discrimination. For any AI principle regarding fairness, human well-being and human-centered values to have meaning in the context of insurance, unfair discrimination must mean both intentional and unintentional discrimination – disparate treatment and disparate impact.

In addition, the AI principles are clearly designed to ensure appropriate **outcomes** from AI. Ensuring appropriate outcomes requires assessment of AI's impact on humans – regardless of the intent – to ensure that AI is producing the intended outcomes. In the realm of insurance, assessment of outcomes requires more than review of what goes into an AI algorithm, but also requires assessment of the consumer outcomes of AI. Consequently, disparate impact as one form of unfair discrimination is consistent with the AI principles and necessary to implement those principles.

Reflecting several of the general principles, **Fair Competition**. An AI principle for fair competition in insurance has at least two prongs. First, **Fair Competition – Minimize Information Asymmetry between Insurers and Consumers**. Fair competition requires symmetry of information between consumers and insurers. This means far greater transparency by insurers to consumers of the types, sources and uses of data obtained by insurers about the consumer. Reducing the asymmetry of information between the insurer and the consumer is necessary to empower the consumer for a more competitive market.

³ <https://www.naic.org/store/free/GDL-1776.pdf> Section 4(A)(4)(b)

Second, **Fair Competition – Antitrust Enforcement.** In the U.S., federal law grants insurers limited immunity from anti-trust violations for information sharing among insurers if those practices are subject to regulatory oversight. This regulatory oversight has historically taken the form of licensing advisory organizations to collect data from insurers and provide pricing recommendations subject to regulatory oversight. In recent years, there has been massive growth in the number of organizations providing algorithms to insurers based on collection of insurer data combined with other data and big data analytics. The result is a large number of organizations, not licensed as advisory organizations, who act as a vehicle for collective pricing (or claim settlement recommendations) by insurers but without the regulatory oversight required for this type of activity.

In addition, we suggest that the general AI principles for **transparency, explainability, accountability and contestability** be elaborated for insurance. For example, some types of third-party data used by insurers are subject to the consumer protections of the federal Fair Credit Reporting Act (FCRA). But, a number of data vendors have developed data sets and algorithms for use by insurers but designed specifically to avoid being subject to the requirements of the FCRA – with the result that the AI principles for transparency, explainability, accountability and contestability are not operative for these AI applications.

Finally, we suggest that the general AI principles for **privacy protection and data security** be elaborated for insurance. Insurance is being transformed from a simple risk transfer product to a protection service in which insurers monitor consumer-generated data in real time through telematics and internet-connected devices. An insurance-specific description of the AI principles for privacy protection and data security in connection with these new protection services offered by insurers will enhance consumer understanding of and confidence in these products and services.

Comments from Iowa Insurance Division

Contact: Travis Grassel, Property & Casualty Actuary

Here are our comments related to the questions posed:

1. Yes, the Principles put forward by OECD seem appropriate for the insurance industry. One area that might be missing is tied to the insurance industry's business product being much different from most in that we collect premiums before claims are paid (i.e. we don't pay for the product we provide prior to selling it like in other industries). This seems like an important concept to recognize when implementing AI principles into our strategies.
2. Yes, the Principles are consistent with Iowa laws and regulations related to general and specific consumer protections and insurance regulatory requirements. One additional component to consider here is the importance of confidentiality for business entities which needs to be balanced with the already documented (in Principle 1.3) importance of transparency and explainability.
3. Again, as mentioned in #1, with AI efficiencies related to insurance it seems important to recognize that because the collection of premiums and the disbursement of claims will presumably be more accurate and efficient, there may need to be some closer attention directed to the gap between amounts collected versus the amounts paid out during the "transitional" period of AI implementation since the product we regulate for the protection of consumers isn't paid for until later, if ever.
4. Adding something related to the ideas discussed in items 1 and 3 above, could be added to Principle 1.5 - Accountability. Here is a suggestion: AI insurance industry actors should be accountable for the balanced distribution of benefits gained to both consumers and producers, the proper functioning of AI systems, and for the respect of the above principles, based on their roles, the context, and consistent with the state of art.



Lemonade Insurance Company
5 Crosby Street, 3rd Floor
New York, NY 10013

William D. Latza,
General Counsel

October 15, 2019

Via email to
dmatthews@naic.org,

Hon. Jon Godfread, Chair
Artificial Intelligence (EX) Working Group
of the Innovation and Technology (EX) Task Force
National Association of Insurance Commissioners

Re: OECD Principles on Artificial Intelligence

Dear Commissioner Godfread:

Thank you for this opportunity to comment on the *Principles on Artificial Intelligence (AI)* adopted May 22, 2019 by the thirty-six member countries of the Organisation for Economic Co-Operation and Development and six other countries. The Principles embody deeply-held norms and values about democracy, privacy and self-determination. As such, they cannot be broadly objectionable.

Yet, application of the Principles may result in an overall decrease in well-being if their application comes to be ruled by confirmation bias¹ and its close relative, fear of the unfamiliar. We believe that the promise of artificial intelligence can and should be advanced ultimately to the benefit of all, while still upholding the *Principles*.

At Lemonade, we have built a vertically-integrated enterprise, with wholly-owned insurers in the United States and the European Union, and the full technology stack to power them. Lemonade Insurance Company is the United States insurance risk bearing entity within the Lemonade group. The entire insurance process has been digitized here. With Lemonade, a chat with our bot, AI Maya, is all it takes to get covered with renters or homeowners insurance, while another bot, AI Jim, pays many claims in as little as three seconds. This breezy experience belies the extraordinary technology that enables it: a proprietary state-of-the-art digital platform that spans marketing to underwriting, customer support to claims

¹ “Confirmation bias” is the tendency to seek out or evaluate information in a way that fits with one’s existing thinking and preconceptions and to reject information that contradicts them.

processing, finance to regulation. Our architecture combines artificial intelligence with the human kind, and learns from prodigious data, to become ever better at delighting customers and quantifying risk. In three years, we have both grown the company and increased the market. We are competing with non-consumption; approximately 90% of our insureds are not switching from another insurer. This is consistent with the mission of Lemonade as a certified B-Corp: to transform insurance from a necessary evil into a social good.

A key enabler of this success has been Lemonade's proprietary digital environment – built from the ground up – that allows us to automate much of the insurance and claims processes, and apply advanced modeling techniques, including different categories of artificial intelligence. Reasoned application of the *Principles* will yield an environment in which others can grow and succeed and ultimately proliferate insurance to more and more of those who need it.

Reasoned application seems to us entirely consistent with the Principles, for they are set out in the Recommendation of the Council on Artificial Intelligence,² which also includes the following specific recommendations:

- 2.3. Shaping an enabling policy environment for AI
 - a) Governments should promote a policy environment that supports an agile transition from the research and development stage to the deployment and operation stage for trustworthy AI systems. To this effect, they should consider using experimentation to provide a controlled environment in which AI systems can be tested, and scaled-up, as appropriate.
 - b) Governments should review and adapt, as appropriate, their policy and regulatory frameworks and assessment mechanisms as they apply to AI systems to encourage innovation and competition for trustworthy AI.

Lemonade believes that setting a regulatory framework within which companies should apply advanced technologies is altogether appropriate for industries where the risks of negative customer outcomes is significant and the consequences substantial. Lemonade believes that the foundation of a successful and safe adoption of AI is hiring the most suitable internal skills and expertise to develop and manage it. Consequently, Lemonade believes that a reasonable regulatory framework should insist on companies having sufficient and relevant in-house skills and experience before deploying AI. In our experience, there are no shortcuts.

² Organisation for Economic Co-Operation and Development, "Recommendation of the Council on Artificial Intelligence," OECD/LEGAL/0449 (May 22, 2019) (<https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0449>).

With this as background, Lemonade offers the following observations and comments on each Principle:

1.1. Inclusive growth, sustainable development and well-being

Stakeholders should proactively engage in responsible stewardship of trustworthy AI in pursuit of beneficial outcomes for people and the planet, such as augmenting human capabilities and enhancing creativity, advancing inclusion of underrepresented populations, reducing economic, social, gender and other inequalities, and protecting natural environments, thus invigorating inclusive growth, sustainable development and well-being.

Lemonade strongly supports these aspirations. We observe, however, that the commercial insurance mechanism often has limited ability to achieve things like reducing social inequalities. Focus on such aspirations ought not to hamper research, development, operation and deployment of trustworthy AI, and we are pleased to find “augmenting human capabilities and enhancing creativity” among the aspirations to be considered.

1.2. Human-centred values and fairness

- a) AI actors should respect the rule of law, human rights and democratic values, throughout the AI system lifecycle. These include freedom, dignity and autonomy, privacy and data protection, non-discrimination and equality, diversity, fairness, social justice, and internationally recognised labour rights.*

Lemonade endorses this Principle, but observes that application could stray far afield from any legitimate or practical role of insurance as a risk transfer mechanism.

In insurance, “fairness” is a guiding principle aimed at treating similar risks similarly – a fundamental consideration for regulation – but in AI, its definition, application and measurement often are complex. Fairness could mean that everyone receives the same treatment, or it could mean that every individual receives individual treatment. Lemonade believes that AI will evolve toward ever greater granularity in risk categorization and, for the reasons discussed below, toward ever increasing fairness.

- b) To this end, AI actors should implement mechanisms and safeguards, such as capacity for human determination, that are appropriate to the context and consistent with the state of art.*

Were this Principle applied in such a way as always to require some form of human intervention, then Lemonade would strongly object. At the same time, it is reasonable to suppose that human intervention is required in some cases, given the

current state of the art, to protect against “incorrect” decisions. This should be a particular, fact-based requirement.

One of the main purposes of AI is to relieve humans from tasks that machines can do better. In our case, for example, both AI Jim and a human would automatically deny a claim where the date of loss is prior to inception of the policy. Similarly, both AI Jim and any human would automatically pay a claim in strictly defined circumstances. Otherwise, AI Jim triages and assigns claims to humans more rapidly, but according to the same criteria, as would human Jim (our Chief Claims Officer). Application of the Principle ought not to prevent evolution of AI Jim to more sophisticated functionality, nor should it prohibit others’ current use of more evolved AI that might require less human intervention. The purpose of human intervention should be more of a quality control measure, randomly choosing samples to be audited manually.

Regulation should acknowledge that humans also routinely engage in “automated decision making,” often by “checking the boxes.” Lemonade submits that the vital part of this Principle is not “capacity for human determination”; instead, the vital part is “appropriate to the context and consistent with the state of art.”

Heuristics are simple strategies comprising rules and methods for arriving at judgments or decisions quickly and efficiently in the face of uncertainty. They are “rules of thumb” learned through trial and error. Lemonade believes that in order to enable AI to evolve its application in the day-to-day business of insurance companies, there must be an acceptance that, just like statistics, advanced algorithmic methodologies cannot be 100% accurate and predictable. We suggest a public/private collaboration to devise measurable thresholds that would trigger a requirement for *appropriate* human intervention.

Humans and AI both rely on heuristics. A human checklist forming the basis for a judgment or decision simply codifies rules that arose and evolved from that individual’s experiences and the experiences of others. A significant difference between machine learning and human learning lies in the number of trials and errors each can experience.³

AI encodes its own intricate instructions, using billions of data to train its machine learning engine. Every time it plays (and it plays millions of times a day), the machine learns, and the algorithm changes.⁴ While it is easy to be alarmed by

³ See “The latest AI can work things out without being taught,” *The Economist* (October 21, 2017) (<https://www.economist.com/science-and-technology/2017/10/21/the-latest-ai-can-work-things-out-without-being-taught>).

⁴ See DeepMind, “AlphaZero: Shedding new light on chess, shogi, and Go,” (December 6, 2018) (<https://deepmind.com/blog/article/alphazero-shedding-new-light-grand-games-chess-shogi-and-go>).

“black box” judgments, machine learning and big data are more likely to solve unfair discrimination, than to compound it.

To understand why, think about the process of using data to segment a population – that is, to categorize individuals; to “fairly discriminate” – as evolving in three phases.

In the earliest phase, all people are treated as though they were identical. Everyone represents an average risk and therefore is charged an identical premium.

In this phase, there is no discriminating based on protected classes, but that does not make it fair. In fact, the result is “unfair discrimination”, because the uniform premium fails to reflect with reasonable accuracy the differences in expected losses. Statutes mandate that insurers cannot charge a price that is “unfairly discriminatory.” A premium is “unfairly discriminatory” if it fails to reflect with reasonable accuracy the differences in expected losses;⁵ in other words, a rate must be based on risk.

The next phase sees the population divided into subgroups, according to their risk characteristics. This process is data-driven and impartial, but because the data are relatively basic, the groupings are relatively crude. This Phase 2 reflects the state of the insurance industry today.

Sorting with limited data generates relatively few big groups and two big problems. The first problem is that the groups may be proxies for protected classes. Take the example of gender. Even if women are on average better risks than men, there will be many women who represent better-than-average risks for a woman, and many men who are worse risks than the male average. Phase 2, then, “unfairly discriminates” against better-than-average women and against average-or-better men by treating all men and women the same. The second is that objectively low-risk members of the group must pay more (per unit of risk) than their less responsible compatriots.

We tolerate this degree of unfair discrimination as a necessary evil decreed by practical limitations. This brings us to the third phase.

Phase 3 continues from where the second phase ends: breaking coarsely-defined subgroups of the population into evermore homogeneous subgroups. It does this on a massive scale, using enormous amounts of data, to produce very complex multivariate risk scores. Big groups are relentlessly shrunk until each individual is a

⁵ Cf., Casualty Actuarial Society, “Statement of Principles Regarding Property and Casualty Insurance Ratemaking” (May 1988) (“Principle 4: A rate is reasonable and not excessive, inadequate, or unfairly discriminatory if it is an actuarially sound estimate of the expected value of all future costs associated with an individual risk transfer.”).

“group of one.” A grouping that in Phase 2 might have been a proxy for a protected class with a risk score of 60, is now seen as individuals, some with a risk score of 90, others of 30 and so forth. This still averages to a risk score of 60, but while that average was imputed to all of them in Phase 2, it is applied to none of them in Phase 3.

In Phase 3, insurance remains the business of pooling premiums to pay claims, but now each person contributes to the pool in direct proportion to the risk they individually represent, rather than their individual share of the risk represented by a large group of somewhat similar people. By charging every person the same amount per unit of risk, we avoid the inequity and the moral hazard of charging the careful to pay for the careless, and of rating people in ways that proxy protected classes.

Phase 3 doesn’t yet exist, but it is a future we should embrace and for which we must prepare.

1.3 Transparency and explainability

AI Actors should commit to transparency and responsible disclosure regarding AI systems. To this end, they should provide meaningful information, appropriate to the context, and consistent with the state of art:

- i. to foster a general understanding of AI systems,*
- ii. to make stakeholders aware of their interactions with AI systems, including in the workplace,*
- iii. to enable those affected by an AI system to understand the outcome, and,*
- iv. to enable those adversely affected by an AI system to challenge its outcome based on plain and easy-to-understand information on the factors, and the logic that served as the basis for the prediction, recommendation or decision.*

We concur, while noting that the objective should not be to teach all policyholders to the level of even a gifted amateur in data science. Rather, the goal should be to inform policyholders in understandable terms how they could modify their behaviors to reduce their risk scores (*e.g.*, by moving inland).⁶

⁶ Obviously, this must be balanced against fraud risk (*i.e.*, telling prospects what to misrepresent in order to lower their premiums).

1.4. *Robustness, security and safety*

- a) *AI systems should be robust, secure and safe throughout their entire lifecycle so that, in conditions of normal use, foreseeable use or misuse, or other adverse conditions, they function appropriately and do not pose unreasonable safety risk.*
- b) *To this end, AI actors should ensure traceability, including in relation to datasets, processes and decisions made during the AI system lifecycle, to enable analysis of the AI system's outcomes and responses to inquiry, appropriate to the context and consistent with the state of art.*
- c) *AI actors should, based on their roles, the context, and their ability to act, apply a systematic risk management approach to each phase of the AI system lifecycle on a continuous basis to address risks related to AI systems, including privacy, digital security, safety and bias.*

We fully support this Principle.

1.5. *Accountability*

AI actors should be accountable for the proper functioning of AI systems and for the respect of the above principles, based on their roles, the context, and consistent with the state of art.

Although “proper functioning” is not defined (here, too, we suggest a public/private collaboration to resolve the issue). In light of the conditions (*i.e.*, “based on their roles, the context, and consistent with the state of art”), Lemonade supports this Principle.

Without in any way diminishing the importance of accountability and corporate governance, we return to our observation above regarding skills and expertise needed in the company. Managers are not able to assure and maintain quality in AI. Expert understanding of how elements are built together and the small details are needed. Managers do not have this visibility and normally do not possess the necessary technical skills.

Lemonade’s preferred approach is to invest significantly in team education and to obtain experts with the necessary skill sets and experience, implementing strict professional standards. This, together with reviewing the actual business results of the AI feature, is something managers can actually track, monitor and control.

Similarly, the Board is the ultimate responsible authority in the company, but there seems little reason to have a data scientist (for example) report directly to the Board. The Board does not have the AI expertise needed, and accountability can

better be accomplished through existing measures, such as satisfying the conditions for application of the business judgment rule, implementing robust internal controls and establishing sound policies (*e.g.*, whistleblowing).

Again, we appreciate this opportunity to comment. Please do not hesitate to contact me with any questions or if we can provide additional information.

Very truly yours,

A handwritten signature in blue ink, appearing to read "William D. Latza". The signature is fluid and cursive, with a long horizontal stroke at the end.

William D. Latza
+1 (917) 608-9499
bill.latza@lemonade.com

Comments from Maryland Insurance Administration

Contact: Ronald K. Coleman, Director – Property & Casualty Rates & Forms

The only additional comment from the state of Maryland as regards the insurance industry is that economic reasonableness be a consideration of AI development so that the application does not place disproportionate burden on consumers. Often, technological advances are parceled out disproportionately based on economic capability.

Comments from Minnesota Department of Commerce

Contact: Phillip C. Vigliaturo, P&C Actuary

It appears to me that bullet 1.1 is inappropriate for what this group would be trying to accomplish, as the statement appears to direct the NAIC into taking a position that could appear to be political. It seems that this statement would be appropriate for the OECD, but not for NAIC. I would think industry goals would be to identify potential profitable segments. Discrimination is not the same as unfair discrimination.

This is also true for the words “non-discrimination and equality” under 1.2 a.

Also, 1.b is not a need for what an NAIC working group would try to be accomplishing.

Should have something along the lines of “AI actors should have documentation on how the system works, ...” for appropriate regulation.

Comments from Nevada Division of Insurance

Contact: Barbara Richardson, Commissioner

Here are Nevada's comments on the OECD's adopted Artificial Intelligence (AI) Principles:

1. Are the Principles put forward by the OECD the right ones for the insurance industry? Is anything missing?
 - While these principles are a good starting point, they will need to be modified to focus directly on the insurance industry and will need some edits of the language to get there. For example, I Section 1. The Principle CALLS ON all "actors to promote ... trustworthy AI." This language has to be altered to address all users, developers and owners within the insurance industry rather than generic "actors" as that language is too broad.
 - We should also be concerned about Section 1, Paragraph 1.1 and the reference to the "planet" as we should be focusing on the effects on risk mitigation and insurance.
 - Section 1, Paragraph 1.2 expresses a respect for the "rule of law" but respect for the rule of law does not mean adherence to it and in insurance regulation, we regulators expect the insurance industry to comply with the spirit of the law as well as requiring compliance with any actual statutes or regulations.
 - Section 1, Paragraph 1.2 discusses "internationally recognized labour rights." Do we know what these are?
 - Section 1, Paragraph 1.4 discusses "safety risks". We may need to expand this to financial risks as well.
2. Are the Principles consistent with state laws and regulations related to general and specific consumer protections and insurance regulatory requirements?
 - While these Principles are good as general principles, they allow insurance industry members to push ownership and controls of AI functionality to outside entities and we need to be cautious that we put the burden back onto the insurance industry to take ownership of the outcomes of the AI technologies they embrace. Placing ownership in others hands should not alleviate the burden on the members of the insurance industry to act responsibly, ethically and with a focus on consumers protections and rights in mind.
3. Are there additional ethical issues related to AI that are not covered by these Principles?
 - Human beings are not always fair or representative of the people and cultures of the world or even of everyone in their state so as insurance regulators, we need to be realistic regarding how these principles may actually play out as AI is only as fair, representative and ethical as the underlying coders, developers and industry users are. These principles should drive regulatory controls but they cannot stand on their own.
4. How might these Principles be worded differently or modified to better serve the insurance vertical while staying at the over-arching, umbrella level as discussed by the Working Group on its call on September 5, 2019, understanding that issues related to defining terms and implementation are outside of scope at this time?

The Working Group should consider focusing on the use of terms such as ownership as well as stewardship. We should also alter language to focus on members of the insurance industry and those who service the needs of the insurance industry and its consumers.

Comments from Ohio Department of Insurance

Contact: Mark Hamlin, Policy Advisor for Emerging Products

I wanted to share some initial thoughts on the questions below and the overall use of the OECD Artificial Intelligence Principles as a starting point for the AI Working Group. I think that generally we are supportive of this approach and of the decision to focus on broad principles that will allow the use of artificial intelligence to develop in a responsible way that benefits consumers, and to avoid detailed requirements that would be obsolete soon after adoption. We agree that there needs to be an emphasis on transparency and explainability of AI applications, along with a view of the entire AI system lifecycle, and we look forward to discussion among the group on how to approach all these issues.

I also think there is continued work needed from the Working Group to tailor the OECD report into useful recommendations for the insurance industry and insurance regulators. Some elements of the OECD report are not applicable to the insurance industry, and even more specifically, to the role of regulators within the insurance industry. And there are principles that we believe should be emphasized more fully than what the OECD report provides. A few examples:

- Consumer protection is universally recognized by departments of insurance as a key principle, and we believe it needs to be at the forefront of our approaches toward artificial intelligence. However, further discussion is necessary as to what “consumer protection” means in the context of AI. In contrast, Section 1.2(a) addresses, among other topics, internationally recognized labor rights, and this concept is further explored in Section 2.4. While labor rights are important to the broader discussion of artificial intelligence, I’m not sure it’s as relevant to the Working Group’s efforts and as insurance regulators, I would be inclined to focus more on consumer protection.
- Several of the OECD recommendations discuss the role of government relative to AI. We believe the Working Group should focus on expanding on the concept in Section 2.3(b) relevant to regulatory frameworks and mechanisms for regulatory agencies to assess the AI-related products and issues arising within the industry. For example, we should identify potential risks to insurance consumers, appropriate levels and methods of disclosure to consumers, how insurance regulators can understand rapidly-changing technologies, how to identify bias and discrimination in AI systems and whose responsibility it is to identify them, etc. Other elements of the OECD report (sections 2.1, 2.2, and 2.3) recommend an active role for governments in terms of research and development, digital environments, and technology deployment. Again, these areas seem less relevant to this Working Group or to the role of insurance regulators.
- Finally, in addition to concerns about the potential for bias and discrimination to be built into the data used in AI, concerns about AI use in the insurance industry also center on data security. While this factor is mentioned in the OECD principles, it is not necessarily prioritized to the extent that we believe it should be in a set of guidelines and recommendations focused on insurance and insurance regulation.

Again, these are just some initial thoughts and I look forward to seeing all the feedback from regulators, consumers, industry, and other stakeholders. I'm sure I will have some additional thoughts after seeing this feedback, and as we move through the process with this Working Group. Thank you for your consideration, and please feel free to reach out if you have questions or if I can be of assistance in this process.

Comments from Pennsylvania Insurance Department

Contact: Michael McKenney, Actuarial Supervisor

1.) Are the Principles put forward by the OECD the right ones for the insurance industry? Is anything missing?

The principles serve as a good basis from which to develop principles specific to the insurance industry. However, they need to be altered – both added to and subtracted from – to form an appropriate set of principles for the insurance industry. For example:

- Members and non-members should be modified to speak to insurers, advisory organizations, rating bureaus, regulators and third party vendors developing AI systems for their use.
- I don't believe insurance-specific principles need to speak of beneficial outcomes for the planet and protecting natural environments.
- Instead of addressing underrepresented populations and various types of inequalities, I think insurance-specific principles should address the need for fair underwriting, eligibility, advertising, pricing and claims settlement practices.
- I don't think insurance-specific principles need to include references to human rights and democratic values. Instead, they need to include reference to state laws regulating insurance.
- I don't think insurance-specific principles need to mention safety risks.

2. Are the Principles consistent with state laws and regulations related to general and specific consumer protections and insurance regulatory requirements?

- There should be specific mention of applicable state insurance laws including, but limited to, unfair insurance practices laws.
- There should be specific mention that rates produced by AI systems must not be excessive, inadequate or unfairly discriminatory.
- There should be specific mention that state data retention laws must be adhered to.

3. Are there additional ethical issues related to AI that are not covered by these Principles?

- I think once the principles are altered to mention insurance regulatory laws such as unfair insurance practices laws, this will be appropriately addressed.

4. How might these Principles be worded differently or modified to better serve the insurance vertical while staying at the over-arching, umbrella level as discussed by the Working Group on its call on September 5, 2019, understanding that issues related to defining terms and implementation are outside of scope at this time?

- Please see the attached suggestions. Note that I have tracked changes enabled.

•

- **Organisation for Economic Co-Operation and Development National Association of Insurance Commissioners (OECDNAIC) Principles on Artificial Intelligence (AI)**

• ~~(Adopted May 22, 2019 by OECD's 36 member countries, along with Argentina, Brazil, Columbia, Costa Rica, Peru and Romania)~~

•

•

- **Section 1: Principles for responsible stewardship of trustworthy AI**

•

- **RECOMMENDS** that ~~Members and non-Members~~ insurance companies, advisory organizations, rating bureaus, regulators and third-party vendors developing AI systems for any of the foregoing, adhering-adhere to this Recommendation (hereafter the "Adherents") promote and implement the following principles for responsible stewardship of trustworthy AI, which are relevant to all stakeholders, including insurance consumers.
- **CALLS ON** all AI actors to promote and implement, according to their respective roles, the following Principles for responsible stewardship of trustworthy AI.
- **UNDERLINES** that the following principles are complementary and should be considered as a whole.
- **1.1. ~~Inclusive growth, sustainable development and well-being~~ Fair insurance practices**
- Stakeholders should proactively engage in responsible stewardship of trustworthy AI in pursuit of beneficial fair outcomes for people and the planet, such as augmenting human capabilities and enhancing creativity, advancing inclusion of underrepresented populations, reducing economic, social, gender and other inequalities, and protecting natural environments, thus invigorating inclusive growth, sustainable development and well-being all stakeholders. Special consideration should be given to ensure that fair underwriting and eligibility practices, ratemaking standards, advertising decisions and claims settlement practices are adhered to. Personally-identifiable information must be safeguarded and protected from public disclosure.
- **1.2. ~~Human-centred values and fairness~~ Adherence to Law**
- a) AI actors should must respect the rule of adhere to laws regulating the business of insurance, human rights and democratic values, throughout the AI system lifecycle.
- AI actors should have specific knowledge of state insurance laws and regulations, including unfair insurance practices laws AI actors must recognize that insurance is regulated by the individual states and territories of the United States, and that AI systems need to comply with the insurance laws within each jurisdiction. Rates produced by AI systems should not be excessive, inadequate or unfairly discriminatory. Data used by AI systems must be retained and be able to be produced in accordance with each jurisdiction's requirements.
- These include freedom, dignity and autonomy, privacy and data protection, non-discrimination and equality, diversity, fairness, social justice, and internationally recognised labour rights.

- ~~b)To this end, AI actors should implement mechanisms and safeguards, such as capacity for human determination, that are appropriate to the context and consistent with the state of art.~~

-
-

- **1.3.Transparency and explainability**

- AI Actors should commit to transparency and responsible disclosure regarding AI systems. To this end, they should provide meaningful information, appropriate to the context, and consistent with the state of art:
 - i.to foster a general understanding of AI systems,
 - ii.to make stakeholders aware of their interactions with AI systems,~~including in the workplace,~~
 - iii.to enable those affected by an AI system to understand the outcome, and,
 - iv.to enable those adversely affected by an AI system to challenge its outcome based on plain and easy-to-understand information on the factors, and the logic that served as the basis for the prediction, recommendation or decision.

- **1.4.Robustness, security and safety**

- a)AI systems should be robust,~~secure and safe throughout their entire lifecycle so that, in conditions of normal use, foreseeable use or misuse, or other adverse conditions, they and function accurately and appropriately and do not pose unreasonable safety risk.~~
- b)To this end, AI actors should ensure traceability, including in relation to datasets, processes and decisions made during the AI system lifecycle, to enable analysis of the AI system's outcomes and responses to inquiry, appropriate to the context and consistent with the state of art.
- c)AI actors should, based on their roles, the context, and their ability to act, apply a systematic risk management approach to each phase of the AI system lifecycle on a continuous basis to address risks related to AI systems, including privacy, digital security, safety and bias.

- **1.5.Accountability**

- AI actors should be accountable for the proper functioning of AI systems and for the respect of the above principles, based on their roles, the context, and consistent with the state of art.

Comments from Texas Department of Insurance
Contact: Nancy Clark, Chief of Staff

Here are some comments for the OECD AI Principles:

For 1.2 What constitutes “internationally recognized labour rights” for the domestic insurance market ?

For 1.3 Should an opt option for consumers be considered?

For 1.4 Robustness, security and safety, Consider adding *logically coordinated*. –

There could an issue that when multiple AI systems interact, the base logic for data will be different and lead to incorrect outcomes when one AI system depends upon another for information due to varied assumptions made by different designers that are now supposed to work together.