

SPECIAL (EX) COMMITTEE ON RACE AND INSURANCE

Special (EX) Committee on Race and Insurance, Aug. 15, 2021, Minutes

Adopted the Special (EX) Committee on Race and Insurance, July 21, Minutes (Attachment One)

Adopted the Special (EX) Committee on Race and Insurance, 2021/2022 Proposed Charges (Attachment One-A)

Adopted the Special (EX) Committee on Race and Insurance, July 1, Minutes (Attachment Two)

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Special (EX) Committee on Race and Insurance
Columbus, Ohio
Aug. 15, 2021

The Special (EX) Committee on Race and Insurance met in Columbus, OH, Aug. 15, 2021. The following members participated: David Altmaier, Co-Chair (FL); Dean L. Cameron, Co-Chair (ID); Raymond G. Farmer, Chair Emeritus (SC); Andrew N. Mais, Co-Vice Chair (CT); Chlora Lindley-Myers, Co-Vice Chair (MO); Lori K. Wing-Heier (AK); Jim L. Ridling (AL); Alan McClain (AR); Peni Itula Sapini Teo (AS); Ricardo Lara (CA); Michael Conway (CO); Karima M. Woods (DC); Trinidad Navarro (DE); Colin M. Hayashida (HI); Doug Ommen (IA); Dana Popish Severinghaus (IL); Amy L. Beard (IN); Vicki Schmidt (KS); Sharon P. Clark (KY); James J. Donelon (LA); Gary D. Anderson (MA); Kathleen A. Birrane (MD); Eric A. Cioppa (ME); Anita G. Fox (MI); Grace Arnold (MN); Mike Chaney (MS); Mike Causey (NC); Jon Godfread (ND); Eric Dunning (NE); Marlene Caride (NJ); Barbara D. Richardson (NV); Linda A. Lacewell and My Chi To (NY); Judith L. French (OH); Glen Mulready (OK); Andrew R. Stolfi (OR); Jessica K. Altman (PA); Elizabeth Kelleher Dwyer (RI); Larry D. Deiter (SD); Doug Slape (TX); Jonathan T. Pike (UT); Scott A. White (VA); Michael S. Pieciak (VT); Mike Kreidler (WA); Mark Afable (WI); James A. Dodrill (WV); and Jeff Rude (WY).

1. Adopted its July 21, July 1, and Spring National Meeting Minutes

The Special Committee met July 21 and July 1. During these meetings, the Special Committee took the following action: 1) heard comments on its 2021/2022 proposed charges; and 2) adopted its 2021/2022 proposed charges.

Commissioner Altman made a motion, seconded by Director Lindley-Myers, to adopt the Special (EX) Committee's July 21 (Attachment One and Attachment One-A), July 1 (Attachment Two), and April 12 (*see NAIC Proceedings – Spring 2021, Special (EX) Committee on Race and Insurance*) minutes. The motion passed.

2. Received a Status Report on Workstream One

Executive Deputy Superintendent of Insurance To reported that Workstream One's initial recommendations were incorporated into the Special Committee's charges and that the Workstream will move forward with the next phase of its work.

In terms of next steps, Workstream One will reconvene in September to move forward with additional engagement with stakeholders to understand the efficacy of diversity-related programs, how companies measure their progress, and what state insurance regulators can do to support these efforts.

Workstream One will also continue collecting input on any existing gaps in available industry diversity-related data.

Workstream One will continue to do research and analysis to identify issues and develop specific recommendations on action steps state insurance regulators and companies can take to improve the level of diversity and inclusion in the industry.

3. Received a Status Report on Workstream Two

Commissioner Clark reported that Workstream Two has been charged with researching and analyzing the level of diversity and inclusion efforts of the NAIC and state insurance departments.

The Workstream recently emailed to commissioners a Best Practices Survey intended to examine, at the zone level, best practices and initiatives state insurance departments can consider promoting diversity, equity, and inclusion (DE&I) in their offices. Once responses have been gathered, the Workstream will meet to discuss and develop a method and forum to share diversity and inclusion information among state insurance regulators.

The NAIC has asked commissioners to share their departments' diversity contact with Evelyn Boswell, NAIC Director of Diversity and Inclusion, for sharing DE&I information and training. The NAIC has also begun the process of developing a diversity training program for state insurance regulators and will get input from the NAIC membership as it moves forward, likely through Workstream Two.

Birny Birnbaum (Center for Economic Justice—CEJ) asked a question of Workstream Two regarding what metrics, if any, the NAIC is using to evaluate DE&I efforts and if the metrics include DE&I within regulatory processes. Mr. Birnbaum noted he

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asked the question based on the presentation made during the NAIC/Consumer Liaison Committee meeting based on the survey of consumer organizations and their difficulty navigating regulatory processes. Kay Noonan (NAIC) said Workstream Two was not specifically charged with looking at diversity within regulatory processes but was charged with looking at DE&I within state insurance departments. When the Workstream meets again, the NAIC will make sure it receives a copy of the presentation, and the Workstream can talk about whether there is a need to expand that charge. Ms. Boswell described what metrics the NAIC is using for internal DE&I efforts, goals, benchmarks, and implementation. She noted it is a three-year strategy and that going into 2022, the NAIC DE&I Council work will ensure there is continued momentum and progress.

4. Received a Status Report on Workstream Three

Commissioner Schmidt reported that Workstream Three recommendations from the initial report were incorporated into the 2021/2022 adopted charges and that the Workstream will move forward with the next phase of its work.

The American Academy of Actuaries (Academy) and the (Casualty Actuarial Society—CAS) have created working groups looking at these issues, and both groups have reached out to the NAIC offering input. The Special Committee will engage with the Academy and the CAS early in the process to see what their research has shown and how it can inform the Special Committee's next steps.

In terms of next steps, the Workstream will reconvene in September to formulate a work plan and develop priorities and timelines.

Commissioner Mais stated that when looking at the charges related to Workstream Three, the Workstream believes Charge F. will garner immediate attention. Charge F. spreads across the workstreams and calls for continuing research and analysis of insurance, legal, and regulatory approaches to addressing unfair discrimination, disparate treatment, proxy discrimination, and disparate impact.

A subset of Charge F. is Charge F.2, which is specific to Workstream Three and calls for the development of analytical and regulatory tools to assist state insurance regulators in defining, identifying, and addressing unfair discrimination in property/casualty (P/C) insurance.

Workstream Three will work closely with the Special Committee in determining who works on the research and analysis part of insurance, legal, and regulatory approaches. It seems likely that the Workstream may want to take on that part first, with a focus on defining the terms, before the Workstream turns to developing analytical and regulatory tools. Workstream Three will be a key part of creating those definitions, and Workstream members will see that as a high priority within the work plan.

Workstream Three's other charges have to do with data collection, affordability issues, and nonstandard markets. The Workstream will prioritize those alongside the unfair discrimination charge. The charge in regard to producer issues has been received by the Center for Insurance Policy and Research (CIPR), and the Workstream will oversee that work.

5. Received a Status Report on Workstream Four

Commissioner Afaible reported that Workstream Four has not met since adopting the Workstream's initial report and recommendations. Now that the Special Committee has adopted its charges, the Workstream is eager to start meeting and do a deeper dive into the practices and barriers that potentially disadvantage minority and underserved populations in the life insurance and annuity lines of business.

The Workstream plans to meet in September to develop a work plan with concrete deliverables and looks forward to making a positive contribution to an issue that continues to be a critical for all.

6. Received a Status Report on Workstream Five

Commissioner Altman reported that Workstream Five met July 8 and June 10. During its July 8 meeting, the Workstream focused on issues related to provider networks, provider directories, and cultural competency. The Workstream asked panelists representing consumers, industry, and providers to respond to several key questions related to these issues, including: 1) Are there ways state insurance regulators can incentivize more diverse, inclusive, and culturally competent provider networks? and 2) How can provider directories be used as a tool to connect patients to culturally competent providers and care? The Workstream also asked if there were specific deliverables the NAIC should work towards to address these issues.

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During its June 10 meeting, the Workstream heard responses from a panel of industry representatives and a panel of consumer representatives on several key questions related to demographic data collection. Those questions asked about the benefits of insurer collection of disaggregated demographic data, the risks of collecting such data, and regulatory barriers to the collection of such data. The panelists also were asked what role state insurance regulators should have in collecting this type of data and whether there was a specific deliverable the NAIC should work towards in considering this issue.

Commissioner Altman noted that also during its June 10 meeting, the Workstream prepared and exposed a draft data collection best practices document reflecting the discussion for a public comment period ending Aug. 19. The Workstream anticipates beginning to discuss the comments received on this document during its meeting on Aug. 26.

Commissioner Altman also noted that Workstream Five plans to continue meeting at least once a month to: 1) work on the data collection best practices document; 2) work on a future network/directory document; and 3) collect additional information on issues the Workstream identified in its report to the Special Committee.

Workstream Five will consider the following topics and actions in the remaining meetings in 2021: 1) during its September meeting, the Workstream plans on receiving consumer presentations, as well as further consideration of the data best practices document; 2) during its October meeting, the Workstream plans on receiving additional presentations regarding equity issues in provider networks and provider directories, as well as discussion of next steps in framing a policy document for networks and directories. Also, if time permits, the Workstream will further discuss the data best practices document; and 3) during its November meetings, the Workstream proposes to receive presentations regarding the equity lessons of the COVID-19 pandemic, approve the data best practices document, and release a network/directories equity issues policy document for stakeholder comment.

7. Heard a Presentation on the Availability and Affordability of Insurance for Minority Consumers from Robert W. Klein and Associates

Robert W. Klein (Robert W. Klein and Associates) reported on the availability and affordability of insurance for minority consumers. He noted that empirical research indicates that some consumers (e.g., African Americans, low-income households) tend to pay higher premiums and may have less adequate coverage. He asked: Is this due to unfair discrimination or other factors or a combination of both?

Mr. Klein said as an economist specializing in insurance, unfair discrimination could be explicit or implicit. Insurers may not intend to treat certain consumers unfairly, but certain rating factors (e.g., credit scores) could have a “disparate impact” on these consumers.

What constitutes “unfair” discrimination depends on the standard for “fair” discrimination. There is the actuarial standard, which is embodied in most, if not all, state rating laws. Pricing/underwriting are “fair” if factors used are commensurate with an insured’s risk. There are other standards that may be applied, such as insurance prices should be the same for all insureds or based on an insured’s ability to pay.

Mr. Klein discussed the issue of “disparate impact,” which refers to practices that have adverse effects on certain protected groups that do not appear discriminatory on their face but are discriminatory in their application or effects. He said there is this “business necessity” defense in which the challenged practice serves a legitimate purpose that cannot be served by an alternative practice with a less discriminatory effect. This is something that a company or firm that is accused of disparate impact might offer in defense of what it is doing.

Mr. Klein noted that he continues to be involved in insurance issues and follows activities regarding unfair discrimination and other aspects of insurance. He said he recognizes the concerns and is sympathetic to availability and affordability problems. He said he believes allegations of unfair discrimination warrant careful and rigorous investigation and public policies that improve market efficiency and equity. Regardless of whether insurers engage an unfair discrimination, there are measures that could improve the availability and affordability of insurance for minority and low-income consumers. He said good policy should be based on sound research and careful consideration of the trade-offs associated with different measures.

Mr. Klein next briefed the Special Committee on economic principles. There are three conditions for economic price discrimination: 1) the seller must have some control over prices; 2) the price discriminator must be able to segregate consumers into groups with different elasticities of demand or reservation prices; and 3) there is no opportunity for arbitrage—resale by low-price to high-price consumers, which really does not apply to insurance. He said an economist named Gary Becker in 1993

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proposed that economic price discrimination should seek to determine whether firms' profits on minority consumers are higher than they are for non-minority consumers.

For actuarially unfair discrimination to occur, there needs to be some form of market failure that enables insurers to acquire market power or that otherwise impairs efficient market functioning. Also, insurers would need to be able to segregate low-income/minority consumers and charge them higher premiums. While most economists believe that auto and home insurance markets generally meet the conditions for workable competition, there are problems, and Mr. Klein said the most significant problem is in auto and home insurance. Both insurers and consumers have imperfect information. Many consumers have a poor understanding of insurance, and some may find it difficult to shop for it.

Mr. Klein asked what the literature says. He said studies by consumer groups conclude that insurers engage in unfair discrimination, whether it is explicit or implicit against minority and low-income consumers. The most rigorous studies by insurance economists have not found evidence of unfair discrimination in pricing in auto and home insurance. He said that does not mean it does not exist and said that these studies, for the most part, are about 20 years old. These economists are more guarded in their conclusions regarding the effects of insurers' underwriting/marketing practice on the availability of coverage for minority/low-income consumers. The economists have not been able to rule out the possibility that these underwriting and marketing practices may have effects on availability and may result in certain consumers having less than adequate coverage. Findings of studies by state insurance regulators tend to be consistent with academic studies, such as a study performed by the Missouri Department of Insurance (DOI) in 2018. There are some exceptions. For example, some older studies by the Texas Insurance Department found evidence of unfair discrimination. Differences in findings appear to be due to different methodologies used by different researchers.

Mr. Klein formed a study commissioned by the National Association of Mutual Insurance Companies (NAMIC) earlier this year that analyzed data published in the NAIC's 2020 Private Passenger Auto Study. This report contained tables/figures showing average premiums, pure premiums, and loss ratios by income quartile for each state. Underlying data was at a ZIP code level. Mr. Klein's principal objective was to determine how these insurance metrics varied with income. He found that average premiums, pure premiums (average loss costs), and loss ratios tend to be higher in low-income areas, but this pattern was not consistent across all states.

Mr. Klein's study indicates that loss ratios tend to be higher in low-income areas, but this pattern is not consistent across all states. Where loss ratios are higher or the same in low-income areas, this suggests (but does not prove) that insurers are not charging low-income drivers "excessive" rates. Then there are a number of states where there is the opposite case, so it does suggest that drivers in those states are being charged excessive rates.

Mr. Klein said his analysis was at a high level and not rigorous. He could not access nor analyze data at a ZIP code level. While income may serve as a proxy for race/ethnicity, it is not the same thing. He was unable to analyze how premiums, claims, and loss ratios varied with race/ethnicity and other variables that could affect or be associated with insurance premiums and availability.

Mr. Klein said there is a need for more rigorous research that would provide a much better understanding of what minority and low-income consumers face with respect to the price and availability of auto and home insurance and what factors drive their experience. This research could take various forms, such as: 1) analysis of ZIP code-level data coupled with economic and demographic data; 2) surveys of consumers; and 3) examination of insurers' rating models, underwriting guidelines, marketing, etc. Mr. Klein said he is interested in whether certain consumers are at a disadvantage with respect to their ability to shop for insurance. He said this definitely could have an effect on what consumers pay for insurance and the quality of coverage consumers receive.

Mr. Klein noted that good ZIP code-level data for auto insurance is available for every state to the NAIC Tableau application. The statistical agents and advisory organizations (e.g., the Insurance Services Office [ISO] and Verisk Analytics) have even better data at a transaction level. J.D. Power has good survey data, but it is reluctant to share it for this kind of research. He said academic researchers need data as well as financial support to conduct this kind of research.

Mr. Klein noted that good policy requires good research. These are not simple problems with simple explanations that are easy to solve. Banning certain rating factors (e.g., credit scores) may seem like a good idea, but it could backfire. He said if the nature, extent, and causes of availability and affordability problems could be understood, then appropriate welfare-enhancing "solutions" could be designed. They could involve restrictions on certain insurer practices, reducing risk and claim costs for minority consumers, improving consumer information and the ability to shop for insurance, and other measures (e.g., taxpayer-funded subsidies).

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Commissioner Ridling asked how the quartiles are identified. He asked if it is IRS data or housing data. Mr. Klein responded he believes the NAIC used census data to divide ZIP codes into these income quartiles. So, it was linking the census data to identify the ZIP codes, and then the NAIC, with the help of the statistical agents, have the insurance data for those ZIP codes. There were some ZIP codes for which income data was not available, so that creates that fifth category.

Commissioner Ridling asked if it was basic income data from the IRS. Mr. Klein said it was not the IRS. He said it was basically the U.S. Census Bureau and not necessarily the 10-year census. There are also other surveys the Census Bureau does every one or two years. He said he believes that was a source of the income data for those ZIP codes, but the NAIC just used either a mean or median income for a ZIP code to determine where they fit within which quartile.

Eric Ellsworth (Consumers Checkbook) asked Mr. Klein his thoughts on the impact of difficulty in shopping for consumers in terms of potentially increased premiums. Mr. Klein replied it is a great concern and said he is not aware of any research. His concern stems from the fact that it is generally known that if consumers shop for insurance and they are well informed about it, they often can get a better price and a better-quality coverage for what they pay. The concern is there might be low-income groups and, to the extent that minorities tend to have lower incomes or live-in certain areas, they are not able to shop as well. It may have more to do with access to the Internet or access to insurance agents. All these issues have been raised in the past, but Mr. Klein said he is not aware that anyone has really studied this.

8. Heard a Presentation on Testing for Racial Bias in Insurance from the CEJ

Mr. Birnbaum discussed testing for racial bias in insurance. He noted that provisions regarding fair and unfair discrimination are generally found in two parts of insurance statutes. Unfair discrimination is generally defined in two ways: 1) actuarial. There must be an actuarial basis for distinction among groups of consumers; and 2) protected classes. Distinctions among groups defined by certain characteristics—race, religion, national origin—is prohibited regardless of actuarial basis.

Mr. Birnbaum asked why race is a prohibited factor for underwriting or pricing. He said for some lines of insurance, race is predictive of insured loss, so he asked why life insurers are prohibited from using race as an underwriting pricing factor. He asked if race were predictive of auto insurance claims, then why should insurers be unable to use that or any other factor that is predictive of claims. He said Mr. Klein's report suggests it should be.

Mr. Birnbaum said one reason race is prohibited could be that people have no control over their race; they are born with it. However, he said there are plenty of pricing factors based on characteristics that consumers have little or no control over like age or gender. Religion is a prohibited factor, but consumers can change their religion. Mr. Birnbaum asked again why state and federal laws declare that racial discrimination is unfair discrimination in insurance.

Mr. Birnbaum said he suggests the reason race and protected class characteristics are carved out regardless of actuarial fairness is there is a history of discrimination that, at best, has left a legacy of outcomes that are embedded in the data used for actuarial analysis and, at worst, continues today with racist practices, whether intentional or unintentional, that are unrelated to risk or cost of insurance. Unfair discrimination in insurance regulation recognizes that historic discrimination has long-lasting effects that disadvantage these groups. The shorter life expectancy of Black Americans is not caused by their skin color, but by the historic and ongoing discrimination in housing, health care, and policing. Mr. Birnbaum said this is why U.S. federal civil rights and anti-discrimination laws on employment, credit, housing, and insurance have always been understood to prohibit not just intentional discrimination, but practices, intentional or unintentional, that result in disparate outcomes. Federal laws and every court that has opined on the issue recognize both disparate treatment and disparate effect as unfair discrimination.

Mr. Birnbaum noted that systemic racism refers to policies, practices, or directives that result in advantages or disadvantages to individuals or communities based on race, including harm caused by infrastructures that determine access and quality of resources and services.

Mr. Birnbaum went on to identify three ways systemic racism can manifest in any aspect of the insurance lifecycle—whether for marketing, pricing, or claims settlement. One would be disparate intent, which is the intentional use of race. Mr. Birnbaum said for this presentation, he will focus on two types of unintentional forms of racial bias: 1) proxy discrimination, a factor predicting race and not the intended outcome. This is the use of non-prohibited factors that, due in whole or in part to a significant correlation with a prohibited class characteristic, causes unnecessary, disproportionate outcomes on the basis of prohibited class membership. The result is unnecessary racial bias because the predictive factor is not in fact predicting the outcome. For example, he said to consider the use of criminal history information in Ferguson, MO. Using criminal history as a predictive variable would simply be a proxy for racist policing practices; and 2) disparate impact, which means disproportionate outcomes tied to historic discrimination embedded in insurance outcomes. Mr. Birnbaum said it is important

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to distinguish between proxy discrimination and disparate impact. With proxy discrimination, insurers have or should have interest in stopping this unnecessary discrimination.

Disparate impact, however, requires a policy decision based on equity considerations—specifically, prohibiting the use of a particular data source or consumer characteristic that compromises the cost-based and risk-based foundation of insurance. Equity-based decisions have been made, and that is why intentional use of race is prohibited. In the big data/artificial intelligence (AI) era, it is essential for insurers to test their algorithms and for state insurance regulators to test actual consumer market outcomes for proxy discrimination and disparate impact. While there is an important distinction between disparate impact and proxy discrimination, there is a common methodology to test for both consistent with predictive analytic methods that insurers use.

Mr. Birnbaum said to explain how current analytic methods in insurance can be used to test for racial bias, he will explain the difference between analyzing one variable at a time and analyzing multiple variables simultaneously. He noted that in the past 30 years, insurers have moved away from univariate analysis to multivariate analysis—from analyzing the effects of one risk characteristic at time to simultaneous analysis of many risk characteristics.

Mr. Birnbaum explained the problem with univariate analysis. He said if the relationship of age, gender, and credit score is analyzed—each individually—to the likelihood of a claim, the individual results for each risk characteristic are likely capturing some of the effects of the other risk characteristics. This is because age, gender, and credit score (or other risk classifications) may be correlated to each other as well as to the outcome variable.

To address this problem, insurers have developed multivariate analysis techniques, which simply means that several predictive factors are analyzed simultaneously. By analyzing these predictive variables simultaneously, the model removes the correlation among the predictive variables. If another predictive variable or a control factor were added, such as geographic location, then it would be possible to identify whether age, gender, or credit score were correlated with location and better identify the unique contributions of age, gender, and credit score to predicting the outcome.

Mr. Birnbaum reviewed a number of slides showing disparate impact as both a standard and methodology. Using a multivariate model and race as a control variable, he noted that “the impact of race can be seen on both the outcome—is the algorithm itself racially biased—and the impact on the predicted variables themselves because adding race removes the correlation between race and the other predictive variables.” Mr. Birnbaum noted this is one common method of testing for racial bias, but there are a variety of methods that generally seek to do the same thing: identify the correlations between predictive variables and race (or other protected class factors) and evaluate the impact of that correlation on the predictive capability of the model. After reviewing a number of examples, Mr. Birnbaum said the one key takeaway is that disparate impact analysis improves cost-based pricing and is entirely consistent with the cost base foundation of insurance.

Mr. Birnbaum said a regulatory regime requiring testing and related actions by insurers is a holistic approach to identifying and addressing systemic racism in insurance and avoids historical debates over banning selected rating factors. By testing their algorithms, insurers test not just individual predictive variables, but the algorithm as whole. The holistic testing approach avoids three key issues with efforts to ban selected factors because those selected factors are considered proxies for race: 1) testing confirms and distinguishes between proxy discrimination and disparate impact; 2) avoids shifting proxy discrimination and disparate impact from a now-prohibited factor to a remaining permitted factor; and 3) identifies problematic factors previously unknown to the state insurance regulator and the public.

Mr. Birnbaum next discussed insurer testing of algorithms and state insurance regulator testing of market outcomes. He said the least insurers can do to address systemic racism in insurance is to test their practices for and seek to remove racial bias. Mr. Birnbaum noted that state insurance regulator testing of actual consumer market outcomes should accompany insurer testing of their algorithms. State insurance regulators must collect and analyze granular consumer market outcome data for racial bias for several reasons: 1) algorithms do not always work as intended. An insurer’s good intentions are not a guaranty of intended consumer market outcomes; 2) even if individual insurers’ algorithms work generally as expected, industry aggregate consumer outcomes may produce racial bias; 3) it enables regulators to evaluate claim settlement, anti-fraud, and marketing practices—parts of the insurance product cycle for which algorithms are not filed and reviewed by state insurance regulators; and 4) it is a more efficient and effective use of regulatory resources compared to upfront review of insurers algorithms. The market outcome review represents an independent review of objective data. With today’s complex insurer algorithms, upfront review relies on insurer representations.

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Director Cameron said he understands Mr. Birnbaum is asking for the NAIC and insurers to do testing on algorithms if an insurer or its algorithm had data on race, ethnicity, sex, or sexual orientation. He asked Mr. Birnbaum if he considers that to be discriminatory or some sort of proxy discrimination on its face.

Mr. Birnbaum responded no, but he said insurers cannot measure racial bias without considering race. Insurers have to include consideration of sensitive characteristics in order to evaluate whether the algorithm is biased towards those characteristics. Racial bias in lending has been tested for four decades by specifically including consideration of race in those tests. The fact that insurers collect data on race and use it for testing for racial bias does not mean they are required to use it in their algorithms that they actually deploy in the marketplace. Mr. Birnbaum said he pointed out in his comments the use of race is simply to make their algorithms more accurate and devoid of racial bias, not to use race in the marketplace.

Director Cameron asked if an insurer did not have that data, would that not lead Mr. Birnbaum to believe that the insurer was not using that sort of data for any sort of racial discrimination. Mr. Birnbaum responded by saying the theory behind that question is that if insurers do not consider race in their algorithms, then they cannot possibly be discriminating on the basis of race. He said every data scientist knows that is not true, and the reason is that because of systemic racism, racial bias is baked into almost all of the data that is used. Mr. Birnbaum said the other aspect is that there are many sources of data on race that insurers could use to append to their existing data sets in order to do the kinds of testing that he mentioned.

Mr. Birnbaum said there is no reason to stop insurers from collecting data on race with clear consumer protections. He said that even if they are not collecting data on race, which Mr. Birnbaum said he assumes they are not, there are tools and methods in which insurers can get information that serves as a proxy for race that they can append to their individual consumer transaction data in order to do the types of analysis. Mr. Birnbaum said that what he is suggesting is not new or novel; these are techniques that have been in place and used for decades.

Commissioner Mais asked the difference between what Mr. Birnbaum proposed and what the federal government requires mortgage bankers to do when collecting race information to the best of their ability and making decisions if that information is not provided, even though they cannot use it, but it has to be used in order to analyze whether there is discriminatory impact. He asked if there is a difference between that and what Mr. Birnbaum is suggesting.

Mr. Birnbaum replied that lenders test for racial bias from the ground up because they know that federal laws prohibit discrimination on the basis of race. Mr. Birnbaum said he can point to text for developing lender models that show exactly the type of methodology he presented. The federal government says here are the laws and regulations about racial bias and that it is also going to collect granular data. So, the federal Home Mortgage Disclosure Act (HMDA) has been recorded for 40 years for all types of lending, which not only gets information on loans that were given but on applications. To do that, lenders ask the consumers if they are willing to identify their race and, if the consumers willing, they collect it.

Mr. Birnbaum said what he is sharing is a practice that has been in place for decades in the U.S., but it is also the type of testing that is done in Europe now because gender is a prohibited factor in Europe in insurance.

Commissioner Conway noted Colorado passed a law in the last legislative session doing in part what Mr. Birnbaum was talking about, asking the insurance companies to step up and test their algorithms for unfair proxy discrimination. He said Colorado had lots of conversations about the data component and whether it was requiring insurance companies to collect data on race or other protected classes that it may not be otherwise collecting. The companies and their trades tried to make the argument that because they may not have the data, they could not test for it. Commissioner Conway said while that might be true with some protected class information, it is certainly not true with race.

Commissioner Conway reiterated the point Mr. Birnbaum made about how the tools that are out there have been out there for a long time, they are well known, and they have been tested. Commissioner Conway continued saying that he thinks state insurance regulators are in good stead to start doing that work and requiring the carriers to actually test their algorithms and test their machine learning systems to make sure they are not having unintended consequences.

Commissioner Conway said he wants to extrapolate or compare and contrast Mr. Birnbaum's presentation with Mr. Klein's presentation. He said Mr. Klein made the argument that if just pure income is looked at, there may not be an issue in play. Commissioner Conway pointed to a comment in the chat, which he said is a good one, that incomes may not be a good proxy for race at all. Commissioner Conway continued by saying that Mr. Birnbaum's presentation makes it clear that a complete look at the algorithms and testing is needed in order to really see if there is unfair discrimination and that trying to do it just based on one simple proxy is probably not going to work. Commissioner Conway asked for Mr. Birnbaum's thoughts on if testing for proxy discrimination by looking at just one simple factor like income can be done.

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Mr. Birnbaum said it cannot be done using the methodology that the Mr. Klein used in this report on behalf of NAMIC. He said that while Mr. Klein's report is interesting, it does not really have any relevance for the work of this Special Committee because NAMIC and Mr. Klein simply assume structural racism has no impact on insurance and that race has no impact, intentional or unintentional, on insurance outcomes. The logical extension of the conclusions in Mr. Klein's report is that insurers should be permitted to use race because it could be predictive of insurance claims and stopping insurers from using any predictive characteristic will destroy risk-based pricing.

Mr. Klein responded that he made it clear what his study indicated and what it did not show. He said he fully indicated the limitations of the study. The study by itself should not be interpreted as a finding that insurers do not engage in unfair discrimination or that everything is fine. He said he worked with the data he had, which was limited and at a high level. He said the best studies have been done by him and others 20 years ago, which used much more granular data and much more rigorous analysis. He said even those studies were subject to limitations. Mr. Klein said he does not agree that his report or presentation shows or proves that insurers' practices are perfectly fine or there are not problems with availability/affordability for minority consumers.

9. Heard a Presentation on the ACLI's Racial Equity Initiative

Bruce Ferguson (American Council of Life Insurers—ACLI) commented on the ACLI's economic empowerment and racial equity initiative and the commitment of its board of directors to make DE&I, financial security, and investing in improving the upward mobility of underserved communities a long-standing priority for the ACLI.

He noted the Special Committee put in motion a significant effort on the part of the NAIC. The ACLI's board of directors approved that economic empowerment and racial equity initiatives align between what the ACLI is working on and the NAIC workstreams.

Mr. Ferguson noted three things that are the ACLI's priorities: 1) corporate governance and diversity; 2) financial inclusion, which also includes algorithmic accountability and the barriers to licensure and employment in the insurance industry; and 3) racial equity impact investment, which is where the industry is looking at ways to aggregate to move the needle further and faster.

Mr. Ferguson also reported that ACLI board members have all signed the CEO action pledge. It is something that brings to the forefront ways in which corporate diversity happens in the corporate level. One of the key elements of that CEO action pledge is finding a way for the CEO leadership to report to the corporate board of directors a diversity plan. About two-thirds of the NAIC commissioners have adopted the NAIC *Corporate Governance Annual Disclosure Model Regulation* (#306) and in it requires the CEO to report the corporate diversity applied to its board of directors. That confidential information allows all state insurance regulators to ask the progress that is being made by the corporation with respect to diversity within the corporation.

Mr. Ferguson said the next issue is financial inclusion. He said life insurers are committed to digital financial inclusion that provides a gateway for all companies to be able to protect their family's financial future no matter their gender, race, or economic status.

Mr. Ferguson thanked Commissioner Godfread for the work that he has done to advance the AI principles that were adopted last summer. Mr. Ferguson said the ACLI supported and adopted a road map for taking advantage of new and innovative ways to reach a broader segment and close the racial wealth gap within the industry.

Mr. Ferguson noted that regarding the discussion of what an overall framework should look like, the ACLI had a cadre of member company data scientists, actuaries, lawyers, and a lot of groups daily, if not weekly, for the past year looking at recommendations that the ACLI might be able to make as to how to test algorithmic data to implement measures avoiding unintentional racial bias. Not every company is the same, and the ACLI has adopted and has some initial ideas about how it might share that with state insurance regulators going forward.

Mr. Ferguson said he listened to Mr. Birnbaum and has talked to him in the past about some of the CEJ's ideas about correlation versus causation. Mr. Ferguson said none of that is easy to figure out it, and it all certainly depends on what this group will be looking at going forward.

Mr. Ferguson thanked Commissioner Mais for his work at how he will address the issue going forward. He said it is looking at what companies are doing now so that further discussion can be based on what additional action might be needed.

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Mr. Ferguson also thanked Commissioner Conway for his work over the past few months on legislative session.

10. Heard a Presentation on Fairness in Auto Insurance from Root Insurance

Alex Timm (Root Insurance) stated that insurance has never really been about data sets; it has always been about people and the obligation owed to each other. It is recognition that at some point, everyone falls down and needs help picking themselves up. At a basic level, fair insurance underwrites a fair society. He said that is why many of us are passionate about this industry today.

Mr. Timm noted if success is measured by the distance between ideals and reality, unfortunately, industry has a big problem. He said years in the industry have made it clear to him that fairness is not always considered a virtue. Fairness and profitability are often seen as mutually exclusive at best, and irreconcilable at worst. It does not have to be that way. He said he started Root six years ago based on the idea that insurance can be fairer. He said Root's goal is to make insurance fair and more equitable by harnessing modern technology and data science, enabling providers to offer personalized policies. To accomplish this, industry needs to transition away from premium price based on demographics.

Mr. Timm said leading among these unfair demographic-based systems is credit-based scoring in auto insurance. Credit-based scoring is currently used by every major auto insurer in the country as the main factor to price policies. Under the system, those with lower credit scores are often forced to pay more, even if they are the safest drivers on the road.

Mr. Timm said more than anything else, credit scores entrench bias into pricing, and its effects are not felt equally. For those who are not wealthy or have a thin file, the system means paying more because of who they are rather than how they drive, which is a controllable factor. An unfair system becomes more unfair when race becomes a factor. According to the urban institute, 50% of white households have FICO credit scores above 700, while only 21% of Black households do. He said he does not know how industry can have a system with those kinds of basic facts that does not in some way perpetuate racial injustice.

Mr. Timm said those who did not happen to grow up in the right place or those who are young and do not have a credit history are negatively affected by the use of credit score in insurance pricing.

As an entrepreneur, Mr. Timm said he believes America can still offer the reality that people can build the dream and build their life, but it is hard to do that when there are limits to the possibilities of that dream, limits that are well outside of an individual's control. As an example, Mr. Timm cited Pedro Montenegro, who has a phenomenal driving record. He has never been in a car accident, nor has he been issued a ticket for a moving violation. He also never in his adult life qualified for affordable car insurance. He is a 30-year-old Guatemalan American living in Washington, DC, and he has suffered at the hands of the credit system. He is saddled with student loans, and he had some irresponsible spending in his younger years, so his credit score is in the low 500s. His auto insurance premiums and the quotes he is eligible for are \$350 a month, and this is for a government-mandated purchase product. The only ticket he has ever had was for a broken taillight. His rates should not be that high.

Mr. Timm said the difference between cause in correlation is everything, and the truth is that credit is a proxy for race and income, not risk. He said this was supported by the evidence from Mr. Klein's study that showed loss ratios essentially being flat by income group, which effectively means insurers are using income to price.

Mr. Timm said industry needs to build a better system of auto insurance now, but it will not happen on its own. He said the good news is that viable alternatives are already readily available. He said Root has seen what this can look like. He said Root has never used occupation and has never used education level to determine rates. When drivers have control of what affects their premium, that is when insurance becomes fair. He said Root does this by measuring real driving behavior through telematics. Based on this data, Root calculates a rate that more accurately reflects how someone drives rather than how likely they are to file a claim.

Mr. Timm said he rejects the notion that reform is a zero-sum game and said that Root is proof that inequality can be combatted. By making risk assessment fairer, Root can make car insurance more accessible and encourage the nearly 13% of uninsured U.S. motorists to enter the market, creating benefits for drivers and auto insurance alike. He said he knows industry can create a fairer world, one where insurance protects and supports rather than burdens and suppresses.

Mr. Timm said he has worked in the industry and has seen firsthand how comfortable many of the players are with how things currently work even as they know that there is better and more fair way. He said he would like to see a world where industry

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does not use demographic factors that are beyond a driver's control to set their car insurance rate. He said he would like to see drivers priced individually on their behavior and risk, not as part of a group because of where they work or their education level.

Mr. Timm said the work the Special Committee is doing to investigate the source of bias in insurance is essential and that he supports what it is doing. He urged the Special Committee to not settle with the way things are but rather focus on the way things should be. He said his hope for the Special Committee is that its research and its tough conversations will result in the creation of a model law that can guide commissioners and legislators to bridge the gap between today's unfair reality and the fairer ideal that industry is so close to. By opening a dedicated investigation into the role that credit-based scoring plays and perpetuating inequality, Mr. Timm said the NAIC can further its goals of creating "fair competitive in healthy insurance markets to protect consumers." He said industry should take this opportunity to do things the right way and drop the credit score.

Commissioner Donelon asked one question relative to adverse selection. He said in Louisiana about five or six years ago, an insurer failed in large part because it failed to use credit and the rest of the industry was using it. He asked how Root addressed that problem relative to competition with the rest of the national carriers.

Mr. Timm stated there are multiple states in the country where insurers are profitably writing today where credit score is not allowed. When the state insurance regulators move, he said industry has lots of examples of companies that can certainly become profitable and make it work. The second is using modern techniques like driving behavior and measuring the causal effects of why someone gets into an accident. Mr. Timm said Root has proven through its data—which has been validated by Milliman and is now in the public light—that it is far more predictive than really any of those other variables. He said Root believes that through the advent of machine learning and technology, it can actually build a system that puts control back into the consumers hands and rewards them for doing the right things. By doing so, he said Root will not have the level of adverse selection that Commissioner Donelon is referring to. But most importantly, Mr. Timm said Root believes that it is most important for state insurance regulators to act to entirely eliminate it in markets, which has been done. He said in those markets, there are profitable, healthy, and competitive insurance environments.

Commissioner Donelon said Louisiana has been debating this issue back to his time in the '90s, as chair of the House Committee on Insurance. He said his understanding is only five states now—California, Colorado, Maryland, Massachusetts, and Washington—ban the use of credit, and two of those are just recently added to the original three. So, he said it is still quite uncommon. He said Louisiana has seen the result of adverse selection on a local company that has a good business along the lines of what Root does.

11. Heard Remarks from the APCIA

Phillip L. Carson (American Property Casualty Insurance Association—APCIA) commented that it is important to get more involved with this Special Committee's work as it moves forward on its financial charges. He said that he would like to think that industry and state insurance regulators can work together to find policy options that improve diversity and inclusion within the insurance industry while also addressing, to the extent it can, some of the most intransigent problems that continue to disadvantage minority communities. As a core foundation, he said insurance is built on risk-based pricing, meaning that insurance is priced according to the risk of loss based on past loss experience and other objective factors of loss potential. The risk-based pricing framework also encourages risk mitigation and safety, which in turn can lower the cost of insurance.

Mr. Carson said risk-based pricing is just the beginning of a conversation. He said the APCIA has been listening closely to the Special Committee and is not tone deaf to its concerns about addressing the disproportionate impact of the cost of insurance, specifically auto and homeowners' insurance. Mr. Carson said to state for the record, the APCIA is committed to working with this Special Committee on next steps. The APCIA is committed to expanding availability and affordability of insurance for treating all consumers fairly. He also said the APCIA is committed to maintaining a healthy and competitive insurance market, and its members are committed to always being there for all policyholders when worst events happen. Mr. Carson said the APCIA and its members have been working on analyzing and understanding various concerns such as affordability, explain ability, and fairness, as well as issues associated with intentional or unintentional discrimination.

Mr. Carson continued by summarizing the internal discussion that the APCIA has been having on framing these concerns and identifying potential solutions to those concerns. He began with intentional discrimination. This area of concern ought not to be an industry problem. Offering insurance with the intent to discriminate against protected class is illegal.

Mr. Carson said proxy discrimination is another form of intentional discrimination and, therefore, also requires more scrutiny. Evidence of intentional discrimination is more appropriately addressed to the regulatory apparatus. Understanding and

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addressing unintentional discrimination, however, is more problematic. Identifying intentional discrimination requires a deeper loss analysis. There have been studies, including some done by the NAIC, that found that loss ratios for various income groups and groups living in primarily minority areas are not on average significantly lower than other groups. He said, however, if a protected class does appear to be charged a rate disproportionately higher than the expected cost for other groups, then unintentional discrimination may be present. Further analysis would be warranted about the causes and impacts that create that disconnect so that appropriate remedies can be provided.

With respect to concerns about affordability, Mr. Carson said the APCIA has been discussing alternatives to reduce the cost burden placed on low-income communities. These alternatives could include low-cost auto programs, potential subsidies, and initiatives to improve inadequate infrastructure investments that create adverse cost drivers. Regarding “explain ability”, he said the APCIA knows that the mechanics of insurance rating and underwriting are complex, so the challenge for industry and policymakers is to create plain language mechanisms to help consumers better understand the use of risk factors. People sometimes ask why auto insurers use non-driving rating factors. Auto insurance is not only about was an individual’s driving efficiency; it also involves factors such as bad weather conditions, bad roads, or poor maintenance of a car. Therefore, all those types of factors should be considered in the writing process.

Mr. Carson said industry may need to do a better job of explaining rating factors to consumers so they can make more informed choices about their insurance needs and about which insurers best meet those needs.

Mr. Carson said the issue of fairness is often raised, but it is rarely well-defined. For regulatory purposes, unfair discrimination means charging different rates for the same risk. Some outcomes may still appear to be unjust or may appear to contribute or perpetuate historic social inequities. Addressing that current disparity will be difficult. Nevertheless, he said the APCIA hopes policymakers and industry participants can agree on specific outcomes for achieving fairness. Getting to fairness would necessarily involve uncomfortable conversations as they must deal with sensitive issue about race, ethnicity, life experiences, and wealth, or, more appropriately, a lack of wealth.

If the underlying concern of this Special Committee is that certain insurance risk factors are inaccurate, then Mr. Carson said industry needs to work together to find other inputs with less adverse effects. If the risk factors are accurate, but industry does not like the inequitable outcome, it may be necessary to work outside of risk-based pricing to reduce unfair cost drivers. Coming out with fairness solutions will be an incredibly complex undertaking. He said that means industry must be willing to have the difficult conversation about prioritizing what needs to be changed.

In closing, Mr. Carson provided a quick summary of some issues that the APCIA and its members have been discussing and will continue to discuss. The APCIA will continue its evaluation of its concerns with its board working group on social equity and inclusion. In the meantime, he said the APCIA welcomes constructive suggestions from the regulatory community. The insurance industry cannot solve all the problems by itself, and the APCIA knows that it must be part of this solution. He said the APCIA wants to collaborate with state insurance regulators and the rest of industry to address unintentional discrimination and develop potential solutions.

Mr. Carson said the APCIA believes it is possible to develop policy options that address unintentional disparities without compromising the risk-based foundation of its business. He said he will continue to be involved in the work of the Special Committee and that he hopes it will reach out to him and the APCIA with its concerns, questions, and suggestions.

Having no further business, the Special (EX) Committee on Race and Insurance adjourned.

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Draft: 8/2/21

Special (EX) Committee on Race and Insurance
Virtual Meeting
July 21, 2021

The Special (EX) Committee on Race and Insurance met July 21, 2021. The following members participated: David Altmaier, Co-Chair (FL); Dean L. Cameron, Co-Chair (ID); Raymond G. Farmer, Chair Emeritus (SC); Andrew N. Mais, Co-Vice Chair (CT); Chlora Lindley-Myers, Co-Vice Chair (MO); Lori K. Wing-Heier (AK); Jim L. Ridling (AL); Alan McClain (AR); Ricardo Lara represented by Bruce Hinze (CA); Michael Conway (CO); Karima M. Woods (DC); Colin M. Hayashida (HI); Doug Ommen (IA); Dana Popish Severinghaus (IL); Amy L. Beard represented by Claire Szpara (IN); Vicki Schmidt (KS); Sharon P. Clark represented by Rob Roberts (KY); James J. Donelon represented by Tom Travis (LA); Gary D. Anderson (MA); Eric A. Cioppa (ME); Kathleen A. Birrane (MD); Anita G. Fox represented by Karin Gyger (MI); Grace Arnold represented by Galen Benshoof (MN); Mike Chaney (MS); Mike Causey represented by Jackie Obusek (NC); Jon Godfread (ND); Eric Dunning (NE); Marlene Caride (NJ); Barbara D. Richardson (NV); Linda A. Laceywell represented by My Chi To (NY); Judith L. French represented by Tynesia Dorsey (OH); Glen Mulready (OK); Andrew R. Stolfi (OR); Jessica K. Altman (PA); Elizabeth Kelleher Dwyer represented by Matt Gendron (RI); Doug Slape (TX); Jonathan T. Pike represented by Tanji J. Northrup (UT); Scott A. White (VA); Michael S. Pieciak (VT); Mike Kreidler (WA); Mark Afable represented by Sarah Smith (WI); James A. Dodrill (WV); and Jeff Rude (WY).

1. Adopted its 2021/2022 Proposed Charges

Commissioner Altmaier reported that the Special Committee met July 1 and April 12 to discuss its charges and received two sets of written comments from a broad range of stakeholders. He said the Special Committee appreciates the interest in its work and that it hopes for a shared commitment to addressing any inequities in the marketplace and market practices.

Commissioner Altmaier also reported that the Special Committee made several changes based on the commentary received, as well as for clarity and consistency. He said the Special Committee also proposed that this set of charges carry over through 2022, as well as the remainder of 2021. Commissioner Altmaier explained that with all charges, these can be amended during that period as work is completed or as other priorities arise. He said these charges also anticipate that the existing established workstreams will continue their work as described in the charges in addition to the tasks assigned at the Special Committee level.

Director Farmer made a motion, seconded by Director Lindley-Myers, to adopt the Special Committee's 2021/2022 proposed charges (Attachment One-A). The motion passed unanimously.

Having no further business, the Special (EX) Committee on Race and Insurance adjourned.

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Draft: 8/15/21

Adopted by the Executive (EX) Committee, Aug. 15, 2021

Adopted by the Special (EX) Committee on Race and Insurance, July 21, 2021

2021/2022 Proposed Charges

SPECIAL (EX) COMMITTEE ON RACE AND INSURANCE

The mission of the Special (EX) Committee on Race and Insurance is to serve as the NAIC's coordinating body on identifying issues related to: 1) race, diversity, and inclusion within the insurance sector; 2) race, diversity, and inclusion in access to the insurance sector and insurance products; and 3) practices within the insurance sector that potentially disadvantage people of color and/or historically underrepresented groups.

Ongoing Support of NAIC Programs, Products or Services

1. The **Special (EX) Committee on Race and Insurance** will:
 - A. Serve as the NAIC's coordinating body on identifying issues related to: 1) race, diversity, and inclusion within the insurance sector; 2) race, diversity, and inclusion in access to the insurance sector and insurance products; and 3) practices within the insurance sector that potentially disadvantage people of color and/or historically underrepresented groups.
 - B. Coordinate with existing groups such as the Big Data and Artificial Intelligence (EX) Working Group and the Casualty Actuarial and Statistical (C) Task Force and encourage those groups to continue their work on issues affecting people of color and/or historically underrepresented groups, particularly in predictive modeling, price algorithms, and artificial intelligence (AI).
 - C. (Workstream One) Continue research and analysis to identify issues and develop specific recommendations on action steps state insurance regulators and companies can take to improve the level of diversity and inclusion in the industry, including:
 1. Seek additional engagement from stakeholders to understand the efficacy of diversity-related programs, how companies measure their progress, and what state insurance regulators can do to support these efforts.
 2. Collect input on any existing gaps in available industry diversity-related data.
 - D. (Workstream Two) In coordination with the Executive (EX) Committee, receive reports on NAIC diversity, equity, and inclusion (DE&I) efforts. Serve as the coordinating body for state requests for assistance from the NAIC related to DE&I efforts.
 - E. (Workstream Two) Research best practices among state insurance departments on DE&I efforts and develop forums for sharing relevant information among states and with stakeholders, as appropriate.
 - F. Continue research and analysis of insurance, legal, and regulatory approaches to addressing unfair discrimination, disparate treatment, proxy discrimination, and disparate impact. Make recommendations for statutory or regulatory changes and additional steps, including:
 1. (Workstream Four) The impact of traditional life insurance underwriting on traditionally underserved populations, considering the relationship between mortality risk and disparate impact.
 2. (Workstream Three) Developing analytical and regulatory tools to assist state insurance regulators in defining, identifying, and addressing unfair discrimination in property/casualty (P/C) insurance, including issues related to:
 - a. Rating and underwriting variables, such as socioeconomic variables and criminal history, including:
 1. Identifying proxy variables for race.
 2. Correlation versus causation, including discussion of spurious correlation and rational explanation.
 3. Potential bias in underlying data.
 4. Proper use of third-party data.
 - b. Disparate impact considerations.
 - G. (Workstreams Three, Four, and Five) Consider enhanced data reporting and record-keeping requirements across product lines to identify race and other sociodemographic factors of insureds, including consideration of legal and privacy concerns. Consider a data call to identify insurance producer resources available and products sold in specific ZIP codes to identify barriers to access.
 - H. Continue research and analysis related to insurance access and affordability issues, including:
 1. (Workstream Four) The marketing, distribution, and access to life insurance products in minority communities, including the role that financial literacy plays.

2. (Workstream Four) Disparities in the number of cancellations/rescissions among minority policyholders.
 3. (Workstream Five) Measures to advance equity through lowering the cost of health care and promoting access to care and coverage, with a specific focus on measures to remedy impacts on people of color, low income and rural populations, and historically marginalized groups, such as the LGBTQ+ community, individuals with disabilities, and Alaska Native and other Native and Indigenous people.
 4. (Workstream Five) Examination of the use of network adequacy and provider directory measures (e.g., provider diversity, language, and cultural competence) to promote equitable access to culturally competent care.
 5. (Workstream Five) Conduct additional outreach to educate consumers and collect information on health and health care complaints related to discrimination and inequities in accessing care.
 6. (Workstream Three) Whether steps need to be taken to mitigate the impact of residual markets, premium financing, and nonstandard markets on historically underrepresented groups.
 7. Make referrals for the development of consumer education and outreach materials, as appropriate.
- I. Direct NAIC and Center for Insurance Policy & Research (CIPR) staff to conduct necessary research and analysis, including:
1. (Workstream Three) The status of studies concerning the affordability of auto and homeowners insurance, including a gap analysis of what has not been studied.
 2. (Workstream Three) The availability of producer licensing exams in foreign languages, steps exam vendors have taken to mitigate cultural bias, and the number and locations of producers by company compared to demographics in the same area.
 3. (Workstream Five) Aggregation of existing research on health care disparities and the collection of insurance responses to the COVID-19 pandemic and its impact across demographic populations.

LIFE INSURANCE AND ANNUITIES (A) COMMITTEE – NEW CHARGES

The **Accelerated Underwriting (A) Working Group**, as part of its ongoing work to consider the use of external data and data analytics in accelerated life underwriting, will include an assessment of and recommendations, as necessary, regarding the impact of accelerated underwriting on minority populations.

HEALTH INSURANCE AND MANAGED CARE (B) COMMITTEE – NEW CHARGES

1. The **Health Insurance and Managed Care (B) Committee** will:
 - A. Respond to inquiries from the U.S. Congress (Congress), the White House, and federal agencies; analyze policy implications and the effect on the states of proposed and enacted federal legislation and regulations, **including, where appropriate, an emphasis on equity considerations and the differential impact on underserved populations**; and communicate the NAIC's position through letters and testimony, when requested.

The **Mental Health Parity and Addiction Equity Act (MHPAEA) (B) Working Group** of the Regulatory Framework (B) Task Force will develop model educational material for state departments of insurance (DOIs) and research disparities in and interplay between mental health parity and access to culturally competent care for people of color and/or historically underrepresented groups.

The **Health Innovations (B) Working Group** will evaluate mechanisms to resolve disparities through improving access to care, including the efficacy of telehealth as a mechanism for addressing access issues; the use of alternative payment models and value-based payments and their impact on exacerbating or ameliorating disparities and social determinants of health; and programs to improve access to historically underserved communities.

MARKET REGULATION AND CONSUMER AFFAIRS (D) COMMITTEE – NEW CHARGES

The **Producer Licensing (D) Task Force** will receive a report on the availability of producer licensing exams in foreign languages, the steps exam vendors have taken to mitigate cultural bias, and the number and location of producers by company compared to demographics in the area.

NAIC Support Staff: Andrew J. Beal/Michael F. Consedine

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Draft: 8/9/21

Special (EX) Committee on Race and Insurance
Virtual Meeting
July 1, 2021

The Special (EX) Committee on Race and Insurance met July 1, 2021. The following members participated: David Altmaier, Co-Chair (FL); Dean L. Cameron, Co-Chair (ID); Raymond G. Farmer, Chair Emeritus represented by Michelle Proctor (SC); Chlora Lindley-Myers, Co-Vice Chair (MO); Andrew N. Mais, Co-Vice Chair (CT); Jim L. Ridling represented by Yada Horace (AL); Alan McClain (AR); Evan G. Daniels (AZ); Ricardo Lara represented by Bruce Hinze (CA); Michael Conway represented by Peg Brown (CO); Karima M. Woods (DC); Trinidad Navarro (DE); Colin M. Hayashida (HI); Doug Ommen (IA); Dana Popish Severinghaus (IL); Amy L. Beard (IN); Vicki Schmidt (KS); Sharon P. Clark (KY); James J. Donelon (LA); Gary D. Anderson (MA); Eric A. Cioppa (ME); Kathleen A. Birrane (MD); Anita G. Fox (MI); Grace Arnold (MN); Mike Chaney (MS); Mike Causey represented by Jackie Obusek (NC); Jon Godfread (ND); Eric Dunning (NE); Marlene Caride (NJ); Barbara D. Richardson (NV); Linda A. Lacewell represented My Chi To (NY); Judith L. French represented by Tynesia Dorsey (OH); Glen Mulready (OK); Andrew R. Stolfi (OR); Jessica K. Altman (PA); Elizabeth Kelleher Dwyer (RI); Larry D. Deiter (SD); Doug Slape (TX); Jonathan T. Pike (UT); Scott A. White represented by Don Beatty (VA); Tregenza A. Roach (VI); Michael S. Pieciak represented by Kevin Gaffney (VT); Mike Kreidler (WA); Mark Afable (WI); and Jeff Rude (WY).

1. Discussed its 2021/2022 Proposed Charges and Heard Comments from Interested Parties

Commissioner Altmaier introduced the interested parties who submitted comments and requested to comments on the 2021/2022 proposed charges of the Special Committee (Attachment One).

A. Academy

Laura Hanson (American Academy of Actuaries—Academy) noted that the Academy continues to support the Special (EX) Committee’s efforts pertaining to diversity and inclusion concerns in insurance coverages and in particular to identify and address unfair discrimination. The Academy submitted two comment letters to the Special (EX) Committee in recent months. The first letter underscored the Academy’s commitment to supporting the work of the Special (EX) Committee and provided information about the Academy’s current efforts related to diversity, equity and inclusion (DE&I). The second letter provided comments on the draft charges.

Ms. Hanson noted that the research and analysis described in charge F.2 and charge I.2 for the casualty practice area would be equally relevant research and analysis for the life practice area. Second, she said the Academy noted that the research and analysis relating to disparities among minority policyholders described in charge H.2 may be difficult to accomplish until the Special (EX) Committee has considered enhanced data reporting and record-keeping requirements as described in charge G.

Next, Lauren Cavanaugh (Academy) reported that with respect to the property/casualty (P/C) matters, the Academy was pleased to see many of the comments provided in its Nov. 12, 2020, letter to Workstream Three were included in the charges. In its May 14, 2021, letter, the Academy focused on charge F and charge G. For charge F, it recommended that the NAIC define all important terms, including “disparate treatment,” and that the NAIC develop methods of identifying unfair discrimination prior to developing methods to address it.

With respect to charge F.2, Ms. Cavanaugh said the Academy suggests that any tools developed to focus on unfair discrimination should consider the inputs, such as a rating and underwriting variables, separate from the outputs, such as disparate impact. With respect to those underwriting and rating variables, the Academy recommends including concepts of spurious correlation and the term “rational explanation” in the sub-bullet on correlation versus causation. “Rational explanation” is the term used in the Casualty Actuarial and Statistical (C) Task Force’s *Regulatory Review of Predictive Models* white paper.

Finally, Ms. Cavanaugh said the Academy thinks it is important to add the principles of cost-based pricing as a consideration in addressing unfair discrimination as these principles are fundamental to P/C rate making. With respect to charge G, related to enhanced data reporting and record keeping, she said the Academy suggests the Special (EX) Committee define the term “resources” and create a governance structure for any data collection effort to protect privacy and prevent misuse.

Director Altmaier noted that a number of commenters from industry and consumers recommended that the Special (EX) Committee consider deleting the discussion of causation versus correlation and asked for the Academy's thoughts on that recommendation.

Ms. Cavanaugh stated that correlation and causation continue to come up in these discussions, and it is important to consider them. The reason the Academy suggests the concepts of spurious correlation and rational explanation be included is to address the notion that this is not a binary either/or, accept all variables that are correlated or only accept variables that can be established to have a causal relationship. She said a successful plan has to consider a more broad spectrum of rating variables and how those concepts apply.

B. ACLI

Brian Bayerle (American Council of Life Insurers—ACLI) thanked the NAIC for its leadership on the effort to address systemic inequalities. The ACLI is aligned with the goal to help address systemic inequalities and is encouraged by the discussions taking place at the NAIC to address this critical societal issue. The ACLI is committed to working with the NAIC at all levels to address concerns of fairness and improve accessibility of insurance products to all communities.

Regarding the specific charges, Mr. Bayerle said the ACLI supports the spirit of the proposed charges. Thinking about the direction over the next year, the ACLI believes the Special (EX) Committee should maintain as much centralized control over the efforts as possible while bringing in technical expertise as deemed appropriate. The ACLI believes a centralized approach will help maintain the big-picture view of this critical issue and address any fragmentation that may exist in this process if various subgroups come up with conflicting recommendations moving forward.

Mr. Bayerle said the ACLI recommends the inclusion of charges to the Life Actuarial (A) Task Force and the Health Actuarial (B) Task Force that would ensure both Task Forces are involved in actuarial and risk classification issues emanating from any Special (EX) Committee workstreams related to life insurance and health insurance, respectively.

C. AITC

J.P. Wieske (Horizon Government Affairs on behalf of American InsurTech Council—AITC) stated that the AITC is the independent voice of InsurTechs in support of the development of technology-based innovation in insurance. The AITC supports the proposed charges and noted this work is vital to ensuring regulation of these issues by the states. Furthermore, the proposed charges strike the right balance, ensuring consumer access and thoughtful regulation without overburdening the industry. He said the AITC believes the proposed charges will set the table for state insurance regulators and the insurance industry to promote innovation and provide measured and appropriate growth of InsurTechs by setting new regulatory standards.

D. APCIA

Angela Gleason (American Property Casualty Insurance Association—APCIA) reemphasized APCIA's commitment to being collaborative partners.

Ms. Gleason noted that APCIA understands the state insurance regulators' concerns with unintentional discrimination, explainability, and transparency. APCIA is willing to work with the NAIC to think through these issues and concerns, but it strongly suggests building a foundation of common understanding from which productive and action-driven conversation can emerge. For instance, the charges blur distinctions between the definitions of well-established legal terms, like "proxy discrimination" and "unintentional discrimination." These terms have different measurements and potential remedies. State insurance regulator concerns can be addressed with new and distinct terms that do not confuse existing law and protected classes. APCIA recommends the charges establish a framework for conversation that identifies the current state of the law and articulates the specific gaps to be addressed so everyone is speaking from the same page and same dialogue and that dialogue can begin to center on solutions. With a common foundational understanding, the conversation can more readily develop consensus solutions.

Ms. Gleason said APCIA noted at least four different issues state insurance regulators and policymakers have raised, and APCIA has been developing solutions to address or explain each separate concern. The concerns APCIA has heard include: 1) intentional discrimination, which includes proxy discrimination; and 2) unintentional discrimination, which includes disparate

impact, and reducing disparate outcomes and explainability. APCIA would like to hear from commissioners if the identified issues are incorrect as APCIA wants to work collaboratively to address these issues.

Ms. Gleason said the importance of identifying and articulating the distinct concerns and not conflating solutions into a single existing term that upends well-established case law cannot be understated. APCIA believes taking this deliberate and methodical approach leverages the expertise of the NAIC, staff, state insurance regulators, industry, and consumer advocates. This approach does not slow down or delay the process, but rather it ensures that together meaningful solutions are developed.

Ms. Gleason noted that most of edits submitted in APCIA's comment letter are intended to focus on defining the category of problems state insurance regulators want to address and then creating a framework within which to consider those issues and potential solutions separately.

Ms. Gleason said in addition to outlining a framework for discussion, APCIA's markup of the proposed charges also identifies two new charges that address important considerations. The first identifies opportunities to develop materials, partnerships, and programs that promote economic empowerment. This has been a topic and objective of many presentations to the Special (EX) Committee, and APCIA believes it is an important area of exploration. The second identifies opportunities to address the underlying causes of intentional disparities that are due to circumstances unrelated to insurance, which APCIA says is a holistic approach not different from how state insurance regulators think about other issues like natural catastrophes.

Ms. Gleason said advancing DE&I within the insurance community is a shared objective, and there has been a lot of great work from state insurance regulators and industry. APCIA suggests the charge for Workstream Two, sharing best practices among state insurance regulators, be expanded to include sharing those best practices with industry to emphasize that the exchange of ideas on DE&I are important and can benefit all.

Commissioner Altmaier noted that APCIA's comments focused on the existing legal and regulatory framework for unfair discrimination and asked if APCIA and its members are open to discussions about those existing frameworks and the need to possibly change those if that is where the analysis and data leads us.

Ms. Gleason stated that APCIA is open to all those conversations and needs to understand and come to agreement on what it is and find those gaps.

Director Cameron asked Ms. Gleason to reiterate on charge B; APCIA seems to be taking out work on predictive modeling and prior algorithms. Director Cameron asked what is APCIA's concern with the Special (EX) Committee continuing to work in that space.

Ms. Gleason stated that it is not a concern but adding clarity. Ms. Gleason stated that these issues are not the only ones those groups are working on, so the suggested change was clarification about not preventing other work from moving forward.

Commissioner Altman commented on a particular objection to the proposed deletion, from APCIA and as a preview of the National Association of Mutual Insurance Companies (NAMIC) as well, of the charge to consider collection of demographic information. Commissioner Altman noted the charge has the word "consider" in it and said the charge is to have a conversation about whether that is the thing we should or should not do and is not meant to negate a conversation about barriers or concerns about what that means. She said Pennsylvania has a particular interest in this question, Workstream Five has had some really robust initial conversations about this, and the health insurance industry has had some important organic conversations talking about equity and disparities in the health insurance space. Commissioner Altman said she wants to make sure to note that Pennsylvania and members of Workstream Five feel quite strongly about keeping that reference in the charges. California, Colorado, Connecticut, District of Columbia, and Maryland indicated agreement with Commissioner Altman's comments.

E. BCBSA

Randi Chapman (Blue Cross and Blue Shield Association—BCBSA) stated that BCBSA is committed to a sustained effort to reduce racial health disparities in America and to addressing health and equity in a thorough comprehensive way. She said BCBSA appreciates the work that the NAIC is doing and developing these proposed charges. Ms. Chapman noted that BCBSA has established a national health equity strategy in addition to developing health equity policy recommendations outlined in the BCBSA Issue Brief, *Addressing Health Disparities and Inequities in Communities of Color*, which align with the Special (EX) Committee's proposed 2021 charges and efforts to promote improved access to quality, affordable coverage, and culturally competent care.

Ms. Chapman said BCBSA is committed to being a supportive and collaborative partner to the NAIC and appreciates the collaborative spirit in which this work has been approached. She encouraged commissioners to see BCBSA as a resource and collaborative partner as the Special (EX) Committee develops recommendations and considers these charges.

Ms. Chapman commented on the proposed charges from BCBSA's April and May comment letters. With respect to data in charge G, BCBSA understands and agrees that accuracy in demographic data is key to improving health equity outcomes in all communities across the country. BCBSA understands that there are many overlapping and complex state and federal laws that govern collection of demographic data in the health sector and suggests the NAIC, when considering how to address data, know there are a number of laws that address these issues and a degree of inconsistency in how data is collected and used. BCBSA will continue to work closely with the NAIC to meet that mutual goal of ensuring the industry and state insurance regulators are best positioned to address the need for better data that will ultimately improve health equity outcomes.

Ms. Chapman stated that with regard to provider diversity and culturally competent care in charge H.4, BCBSA shares the Special (EX) Committee's goal of promoting equitable access to high-quality care through improving the racial and ethnic diversity of providers in addition to addressing the language diversity needs and cultural competency challenges.

Ms. Chapman said to meaningfully address existing barriers in access to diverse providers and providers offering linguistically and culturally competent care, BCBSA believes the focus needs to be on the root causes: a lack of diversity within the health care system and health education pipelines; limited availability of providers in areas that are predominantly communities of color, communities where English is not the primary language spoken, and rural communities; and the critical need to promote cross-cultural and implicit bias training within health professions.

Director Cameron noted that BCBSA comments mentioned the lack of nationwide standards and that there are conflicting state and federal standards. Director Cameron asked Ms. Chapman to elaborate on where those conflicts are and also to elaborate as to BCBSA discussing or working on nationwide standards and what the state insurance regulators' role would be in developing those standards.

Ms. Chapman said that BCBSA and industry are working on addressing these barriers and conflicts they see in existing state and federal laws, thinking through recommendations on how to enable the industry to collect the data they need, and using that data in a way that is sensitive and appropriate to the needs of their members. Ms. Chapman said the federal Affordable Care Act (ACA) includes language that suggests there is an ability to collect race and ethnicity data using Office of Management and Budget (OMB) and U.S. Department of Health and Human Services (HHS) standards, but it is subject to discrimination laws in the federal Civil Rights Act. There are a lot of state laws that pertain to data collection on health insurance applications, and there are some states that require a strict use purpose for data collection. Ms. Chapman said the bottom line is this is an area that needs to be delved into a bit more deeply so it is clear what the laws are saying, what the laws allow and what the laws prevent. She said once there is an understanding, work can move forward determining what the best ways are to collect and use data in a way that is sensitive to members' needs and make sure insurers are respecting privacy so they are not in a position where they are collecting data and their members are wondering and questioning how that data is being used.

Ms. Chapman noted that state insurance regulators are in a great position to get a better picture of what the landscape looks like in terms of the legal parameters regarding demographic data collection and also to get a sense of what can be communicated with industry and consumer partners.

Commissioner Mais raised a question in terms of the comments that Ms. Chapman had focusing on network care standards and communities that are underserved with provider shortages. He said BCBSA suggested that focusing on that issue would not necessarily help improve access to care. Commissioner Mais said there are some longer-term solutions BCBSA suggested, but BCBSA also said the NAIC should consider opportunities to inform patients of currently available providers. Commissioner Mais asked Ms. Chapman to expand how that would work within the current system.

Naomi Senkeeto (BCBSA) noted that BCBSA recognizes there are pipeline issues and diversity issues within the system. She said BCBSA is undertaking efforts to think through what the role is for health insurers and as the NAIC continues to work through recommendations in this space, BCBSA wants to partner on that work. BCBSA provided high-level recommendations in the *Addressing Health Disparities and Inequities in Communities of Color* issue brief regarding providing access to linguistically and culturally competent care. Ms. Senkeeto said BCBSA recognizes that there is a concern around network adequacy, but at its core, she thinks the foundational question is more on the access and the availability of providers both from a diversity perspective and from the perspective of traditionally underserved areas and workforce pipelines. She said BCBSA

is committed to an ongoing conversation and a concerted effort to move forward. She said BCBSA wants to partner with the NAIC in this effort.

F. CEJ

Birny Birnbaum (Center for Economic Justice—CEJ) continues to urge the Special (EX) Committee to develop a more systematic approach to examining issues of race and insurance by first setting the foundation defining what is fair and what is unfair discrimination. The CEJ says without this foundation, the workstreams have no guidance or principals against which to evaluate the variety of issues that are raised. Therefore, a solid definition of unfair discrimination that articulates principles of discrimination and disparate impact is essential to meaningfully consider the issues raised in charge 2.F.

Mr. Birnbaum said the CEJ wants to stress the urgency of this first step. The NAIC adopted its principles for artificial intelligence (AI) more than a year ago. These principles included responsibility of insurers to avoid proxy discrimination yet there has been no action of the NAIC to develop the guidance for insurers to implement those principles.

In contrast, the National Council of Insurance Legislators (NCOIL) quickly discussed and adopted the definition, at the urging of industry, of “proxy discrimination” that would not only stop any meaningful efforts to address systemic racism and insurance, but also would limit state insurance regulators’ current authority to even examine practices that raise concern about racial bias. Mr. Birnbaum said the NAIC should consider it a top priority to move quickly to develop meaningful definitions of “proxy discrimination” and “disparate impact” in insurance to counter the NCOIL action.

Mr. Birnbaum said the second step is for insurers to test their algorithms and practices for proxy discrimination and disparate impact. Eliminate proxy discrimination and minimize disparate impact; the problem cannot be fixed if it cannot be measured. Establishing a regulatory framework for insurers to test their processes, whether for marketing, pricing, claim settlement, or antifraud requires a collaborative approach between state insurance regulators, insurers, and stakeholders.

Mr. Birnbaum said the testing paradigm overcomes the current impasse the CEJ sees in states that have tried to address systemic racism by prohibiting the use of certain factors. Those efforts have failed because they evolved into a debate of pricing accuracy versus racial justice. The testing approach overcomes this either/or choice by looking at a holistic review by insurers of racial impact of their practices within the cost-based framework of insurance. Testing for proxy discrimination and disparate impact improves risk and cost-based practices by eliminating spurious correlations in which the factors are predicting race and not the outcome.

Mr. Birnbaum noted that the testing approach is holistic. This means that by analyzing the racial impact of an algorithm, the problems created when prohibiting one factor, only to find that racial bias has shifted to some other existing or new data source, are avoided. Mr. Birnbaum said related to a requirement for insurers to test for racial bias in their marketing, pricing, claim settlement, and antifraud efforts is developing regulatory guidance to: specify what type of testing is acceptable; assist in identifying sources of information on protected class characteristics; specify the actions insurers must take on certain testing outcomes; specify reporting of test results and related actions; and provide a safe harbor for insurers that follow regulatory guidance.

Mr. Birnbaum said the CEJ’s third step to a more systematic approach is in developing a more robust and comprehensive data collection system for state insurance regulators and the public to evaluate actual consumer outcomes, including the outcomes of communities of color. Auditing an algorithm is not a sufficient consumer protection for at least two reasons. First, an algorithm may not produce the intended results. Second, state insurance regulators are seriously overmatched by insurers when it comes to the technical expertise involved in designing and auditing big data/AI models. Mr. Birnbaum said it is only by collecting and analyzing actual consumer market outcomes at a granular level that state insurance regulators and the public can measure progress in the fight against systemic racism.

At a recent hearing of Workstream Five, there was no disagreement over the need to collect this aggregated, granular data on consumer outcomes to help assess racial disparities. Mr. Birnbaum said if the property/casualty (P/C) trades continue their historical opposition to such data collection, it will obstruct the Special (EX) Committees’ efforts. There should be a systematic approach to examining regulatory and public policies that reflect and perpetuate systemic racism. There are practices that clearly fall under commissioners’ current statutory authority, but there are also public policies regarding insurance that reflect and perpetuate historic discrimination outside of your authority, but not outside of your influence.

Mr. Birnbaum urged the Special (EX) Committee to pick up the pace, saying concrete actions are needed to address the structural biases and disadvantages of communities of color. Mr. Birnbaum urged the Special (EX) Committee to adopt some charges and put as much energy into these issues as state insurance regulators did into changing the anti-rebating law, updating the annuity suitability model, and developing the group capital calculation (GCC). It is only by this type of energy that communities of color will see the concrete steps that improve their lives.

Director Fox asked Mr. Birnbaum to expand on the safe harbor idea. She said she understands the need for some kind of certainty, but putting the regulatory imprint on what the insurer has developed has consequences, obviously.

Mr. Birnbaum noted that the safe harbor is related to any kind of liability the insurer would face for unfair discrimination based on proxy discrimination or disparate impact. If the insurer has followed the regulatory guidance to test for or to eliminate proxy discrimination and minimize disparate impact, then if it turns out that there is still some disparate impact or proxy discrimination, that insurer should have a safe harbor in the CEJ's view. Any follow-up should be limited to repairing the problem and providing restitution for consumers. Additionally, there should not be penalties involved with unintentional consequences, despite following the best regulatory guidance.

Director Fox noted the information in the regulatory system would only be as good as the information going in and the regulators' ability to understand whether those things were really done to the certain standards. Director Fox wondered if it is workable to have a safe harbor where the guidance is detailed enough, company-specific enough and deep-dive enough to allow a safe harbor. She asked if that is a necessary component to get compliance.

Mr. Birnbaum said whether it is necessary is going to be up to the NAIC. The CEJ certainly suggests that it is worthy of discussion. He said the CEJ wants insurers to be forthcoming with state insurance regulators and for insurers to test their practices with conscious effort to root out the impact of systemic racism. If insurers need some certainty in terms of liability for doing that, then the CEJ thinks that it is a fair trade-off to get that type of honest appraisal.

G. NPFA

Jeffrey M. Klein (McIntyre & Lemon on behalf of the National Premium Finance Association—NPFA) stated that the NPFA is a national trade association representing premium finance companies. The association is supportive of the NAIC's efforts to research, review, and develop solutions regarding DE&I, as well as issues surrounding access and affordability of insurance to disadvantaged individuals and underserved communities.

Mr. Klein commented on charge H.6. with regard to premium financing. Premium finance loans provide short-term financing to help businesses and consumers purchase insurance for property, casualty, and liability risk. Many small businesses, sole proprietors, and individuals cannot afford the upfront premium expense, lack access to traditional sources of credit, and therefore, need access to insurance premium financing in order to obtain adequate coverage.

Mr. Klein also noted that while the NPFA has no specific comment on the language of the charge itself, the NPFA wants the Special (EX) Committee to be aware of its status and interest. The NPFA stands ready to provide insight, relevant input, and assistance at the appropriate time, through testimony and/or submission of materials, with regard to the premium finance mechanism and the services provided by the premium finance companies.

H. NAIC Consumer Representatives

Katie Keith (NAIC Consumer Representative) stated that the NAIC consumer representatives are supportive of the work of the Special (EX) Committee. The Special (EX) Committee has served as a powerful forum that needs continued executive-level commitment and support to help keep state insurance regulators and industry focused on addressing systemic racism, bias, and discrimination, and increasing diversity and inclusion in the insurance sector. The Special (EX) Committee should continue to play this role going forward in addition to ensuring that the NAIC takes concrete actions and adopts meaningful changes. An executive-level committee will remain crucial to ensuring that state insurance departments and the NAIC develop and adopt consistent policies throughout the organization.

Ms. Keith noted the NAIC consumer representatives' comments primarily focus on Workstream Five and on health care in particular. Among the proposed charges, she said the consumer representatives urge the Workstream to prioritize: 1) enhanced data reporting and record-keeping requirements for demographic data based on race, ethnicity, language, sexual orientation, gender identity, and disability status; and 2) the use of plan network standards to advance health equity. As a starting point, she

said they urge the NAIC to develop white papers on these topics that summarize the existing literature, identify best practices, and discuss the need for consumer guardrails (such as privacy protections and training requirements). The exercise of developing white papers on these two issues will help inform stakeholder approaches, provide guidance to industry, and serve as an evergreen NAIC resource upon which to build a strong foundation.

In response to the question Commissioner Mais raised about provider adequacy, Ms. Keith said that pipeline issues and provider shortages are all known challenges that need to be overcome, but the NAIC consumer representatives also think there are tools insurance companies are underutilizing like access to essential community providers and other ways to extend care to people of color, people with disabilities, and LGBTQ people.

Ms. Keith said there is incredible urgency for the work of the Special (EX) Committee. She said the Special (EX) Committee has started a much-needed dialogue, but that is not enough to address the generations of mistreatment people of color and other historically underserved populations have faced by the insurance industry. Ms. Keith encouraged the Special (EX) Committee to focus on what the legacy of the Committee's could be and what results actually came of the work.

I. NAIFA

Winona S. Havir (National Association of Insurance and Financial Advisors—NAIFA) represents the Horace Mann Companies, which is a company that was founded by educators for educators. A key component of NAIFA's mission is to serve as an industry expert on DE&I by attracting and nurturing members from diverse backgrounds. NAIFA remains committed to this mission and has recently undertaken several leading DE&I initiatives.

With respect to charge H.1, Ms. Havir said there are opportunities to address these issues by removing the barriers that stand in the way for minorities to enter the producer workforce. She said the insurance industry must work with managers, recruiters, and executives to hire, develop, and promote candidates from all backgrounds. The insurance industry should look like the marketplace it represents, which is a diverse one. She said that underserved communities are more receptive to agents and advisors who come from similar backgrounds and can relate to and understand their life circumstances.

With respect to charge H.7, Ms. Havir said NAIFA strongly supports the notion of financial security for all and understands that the expansion of financial education and literacy are critical. Insurance agents and producers play an enormous role in educating consumers. NAIFA is developing tools to encourage its members to take into their communities and help connect the importance of insurance and financial security. She said NAIFA looks forward to contributing our insights and expertise to this effort.

With respect to charge I.2, Ms. Havir said NAIFA has recommended expanding on this charge by addressing the need for access to producer licensing education and exams in languages other than English. She said NAIFA thinks this is an important component to increasing diversity among producers and encouraging a workforce to serve diverse consumers and communities.

J. NAMIC

Tony Cotto (NAMIC) noted that NAMIC remains engaged, ready and willing to discuss work on any and all proposals as they are developed.

Mr. Cotto said for the purposes of this meeting, he will start with a broad comment about the charges. The issues the Special (EX) Committee wishes to address should be specifically identified prior to coordinating and responding to alleged or perceived problems. The Special (EX) Committee and other bodies around the NAIC first needs to establish whether issues exist rather than starting with assumptions or broad mandates about potential problems or potential harms, particularly in the absence of concrete data or facts. NAMIC believes such an approach will improve and better focus the Special (EX) Committee's work today and into the future. Mr. Cotto said as several committee members have noted, this will not be a short or easy process. Additionally, the failure to develop such foundational building blocks and establish the answers to threshold questions will undermine the credibility of any future work by the Special (EX) Committee and the NAIC.

Mr. Cotto noted a couple of specifics regarding the proposed charges and said first that NAMIC wants to commend the Special (EX) Committee's charges related to enhancing the insurance talent pipeline. He said NAMIC continues to believe this is the most valuable area for the Special (EX) Committee's focus and efforts. The looming retirement cliff and accompanying talent crisis in insurance is an existential problem for the industry and for state insurance regulators. Mr. Cotto said the insurance industry must work together on charge C, charge D and charge E to identify smart ways to invest in future insurance

professionals by cultivating the talent pool with an appropriate focus on students and other professionals from diverse backgrounds. He said that in addition to being more attractive employers, diverse companies are more innovative, more profitable and have better retention rates.

Mr. Cotto said second, NAMIC feels obligated to continue raising questions about proposed charges that seem to embrace outcome-oriented analysis rather than the bedrock insurance principle of risk-based pricing, the effort to match rate to risk. He said that charge F and charge G, regarding research and analytical tools to address alleged unfair discrimination and enhance data collection, appear focused on unsubstantiated notions of ongoing, unfair discrimination and the potential collection of socioeconomic and sociodemographic data that insurers do not collect, are not interested in collecting, and consumers do not want to provide. Mr. Cotto said that it is impractical, invasive, and immaterial to how P/C rates are determined and that current laws already prohibit discrimination against protected classes. Mr. Cotto noted the perspective pushed by the charges ignores the fundamental truth about fairness and economic efficiency. They are achieved best when the prices charged to individuals are irrespective of race, national origin, income, or religion and are matched as close to risk as can be made possible.

Mr. Cotto said that NAMIC recommends the Special (EX) Committee expand the dialogue to include consideration of its recently commissioned study, *Matching Rate to Risk: Analysis of the Availability and Affordability of Private Passenger Automobile Insurance*, conducted by Dr. Robert Klein, Senior Research Fellow with Temple University (Philadelphia, PA) Emeritus Professor of Risk Management and Insurance at Georgia State University (Atlanta, GA), and the NAIC's former Director of Research. This study made use of the data collected by the Property and Casualty Insurance (C) Committee and Market Regulation and Consumer Affairs (D) Committee over an eight-year period and published in the NAIC's 2020 *Private Passenger Automobile Insurance Study*. Dr. Klein's analysis found, among other things, that insurers have no incentive to engage in unfair discrimination and that the NAIC's own data does not support allegations that insurers are discriminating unfairly against low-income drivers or the areas where they live. NAMIC encourages the Special (EX) Committee to invite Dr. Klein to discuss his findings at its next meeting.

Mr. Cotto commented that Dr. Klein's study makes clear that rather than a sole focus on the risk-based pricing structure of insurance, there are other avenues that should be studied and can contribute meaningfully to the important work of this Special (EX) Committee, and NAMIC recommends exploring them. For example, to the extent the Special (EX) Committee finds gaps in the availability or affordability of insurance and develops proposals for addressing them, NAMIC recommends that state insurance regulators consider ideas like consumer subsidies, re-distribution of premium taxes for identified communities, systematic review of historical loss ratios, and third-party vendor and algorithm transparency requirements. NAMIC is committed to substantive and meaningful action on these salient issues.

Director Fox asked if NAMIC was suggesting the Special (EX) Committee not focus at all on disparate impact and only look to intentional discrimination in rate setting? Is NAMIC suggesting that as long as it is risk-based, it does not matter if there is disparate impact?

Mr. Cotto noted that disparate impact is a very specific legal framework set up outside of the insurance mechanism and to the extent it is imported into the insurance mechanism, that is a conversation that needs to involve legislators. There has to be an acknowledgment that it would upend the entire framework of underwriting and rate-making.

Director Lindley-Myers noted that she feels an obligation to hold many of the CEOs' to the commitment that companies need to do more and reevaluate longstanding practices that affect protected classes. In addition, regarding Mr. Birnbaum's comments, she asked that Mr. Birnbaum please submit to the Special (EX) Committee any real-world use of the methodology he proposed insurers use to examine and identify proxy discrimination and disparate impact.

Commissioner Altmaier asked NAIC staff to revise the draft charges based on the comments heard today.

Commissioner Altman commented that she is most interested in moving forward on adopted charges so work can start on deliverables for the workstreams and the Special (EX) Committee. She urged the Special (EX) Committee to keep the process moving and adopt charges during the Special (EX) Committee's next meeting.

Having no further business, the Special (EX) Committee on Race and Insurance adjourned.

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