



**Comments of the Center for Economic Justice to the
NAIC Big Data Working Group**

October 25, 2016

On October 24, 2016, the Big Data Working Group exposed revised draft charges for 2017. The Center for Economic Justice (CEJ) submits the following comments to the working group on those charges.

Insurers' Use of Big Data Poses an Existential Threat to the State-Based Insurance Market Regulation. Industry Claims That No Problems Have Been Identified With Insurers' Use of Big Data Are Without Merit.

The chorus of industry comments has two themes – regulators have not identified any problems with insurers' use of Big Data¹ and regulators should leave insurers alone.

Over the last three years, consumer representatives and regulators have identified a number of issues related to insurers' use of Big Data – issues for which regulatory tools and essential consumer protections are missing, including, but not limited to:

- New pricing tools based on databases on consumer-generated and non-insurance personal consumer information with little or no disclosure or accountability to consumers;
- New pricing tools based on Big Data applications which regulators have been unable to evaluate for compliance with statutory rate standards;
- New pricing tools with extreme granularity of rating classes which call into question the viability of the standard rating prohibiting against unfair discrimination – that consumers of similar risk be treated similarly and that unfair discrimination;

¹ AIA Letter of October 17, 2016: The robust dialogue we expect to ensue should not have as a starting place the supposition that new reporting and/or consumer disclosure requirements are necessary to solutions for yet-to-be identified problems.

NAMIC Letter of October 17, 2016: We are not aware, for instance, that there has been a showing there is a lack of statutory or regulatory authority that hampers regulators' ability to evaluate insurer practices relative to use of data. Likewise, we are not aware of any shown need for additional regulatory reporting requirements or consumer disclosures. Regarding data needed by regulators, again we are not aware of any showing that regulators are in need of additional data to evaluate whether insurers are using data appropriately.

PCI Letter of October 17, 2016: There is no sound evidence supporting such a fundamental and radical revision of time tested and effective insurance regulation, including unsubstantiated claims based on vendor puffing often repeated as truth by some advocates.

- New claims settlement evaluation tools based on predictive modeling with no disclosure or accountability to consumers or regulators;
- Insurers' Big Data uses with no regulatory oversight, consumer disclosure or consumer protections, in stark contrast to the oversight and consumer protections available for consumer credit information, for example.
- A statutory infrastructure premised on regulatory oversight of everything that goes into pricing – oversight of data collection (through advisory organizations and statistical agents), oversight of collective pricing mechanisms (through advisory organizations) and oversight of risk classifications (through review of rate manuals and underwriting guidelines) – which is inadequate and ill-suited in an era when regulators have lost oversight of or ability to evaluate data used, collective pricing mechanisms and complex pricing models.
- A statutory infrastructure that fails to provide regulators and the public with the ability to meaningfully monitor market outcomes for consumers – in stark contrast to other financial regulators' ability to monitor market outcomes for other financial services.

Insurers' use of Big Data has great opportunity to benefit consumers and communities with new ways for insurers to interact with consumers for loss mitigation and, consequently, empower consumers to have greater ability to control both their risk profile and premium charges. But, this opportunity will not magically happen without some legislative and regulatory guidance. So-called "innovation" without regulatory guardrails and stated expectations on treatment of consumers can – and has – led to more black-box applications (for pricing and claims settlement) which fail to empower consumers. Regulatory guidance is not incompatible with innovation at all. Rather, regulatory guidance is essential for innovation to realize the promise of Big Data and to speed the adoption of innovative products.

The need for more granular reporting of market outcomes – sales and claims experience – by insurers to regulators on a routine basis is decades overdue. More granular data reporting by insurers of market outcomes has a number of benefits for insurers, including:

- Improved market analysis by regulators to focus market regulation enforcement efforts on problem insurers and problem markets while leaving insurers with good consumer market outcomes alone. Stated differently, sufficient market analysis to truly move towards precisely-targeted investigations and examinations and away from broader examinations.
- Reduction in special data calls since regulators will have data necessary to answer questions about market performance and market outcomes already.

Yet, insurers' trade associations have, for over a decade, consistently argued contradictory positions. On the one hand, the trades have pushed for limits and hurdles for states' market regulation – whether through “domestic deference” or additional market conduct examination procedures, requirements or limitations – complaining that market conduct examinations are expensive and duplicative. But, the trades have also adamantly opposed any effort to expand the routine regulatory market outcome data collection which would make market regulation more efficient and effective for insurers and consumers. The trades' contradictory positions were emphasized just the other day with PCI stating its intent to be more “muscular” in opposition to regulatory data collection.²

Insurers' use of Big Data is an existential challenge to the state-based insurance regulatory system. Without recognition by regulators of this challenge and significant improvements to regulatory capabilities, insurers' use of Big Data will lead to de facto deregulation of insurance with growing gaps and inconsistencies in states' ability to enforce statutory requirements. The insurance trade associations understand this and see an opportunity to achieve their goals of less accountability to regulators and consumers and convincing state legislators to limit regulators' ability to protect consumers through more market regulation restrictions. Their strategy is not to seek “balance,” but to delay regulatory and legislative action on Big Data issues.

We urge the working group and the NAIC to adopt a set of charges regarding insurers' use of Big Data which match the urgency of the challenges to state-based regulation.

² <http://www.intelligentinsurer.com/news/pci-will-be-muscular-as-we-continue-to-combat-regulatory-overreach-says-ceo-sampson-10016>: A sharp increase in the instances of state regulators making requests for data from insurers is a major cause for concern for the Property Casualty Insurers Association of America (PCI), adding to an already big regulatory burden and increasing costs at an already challenging time for the industry. That is the view of David Sampson, president and chief executive of the PCI, speaking ahead of the trade body's annual event this year. “The number of data calls [requests for information by state regulators] has now reached a level where it is intrusive and affects insurers' ability to effectively service their customers,”

Specific Recommendations/Comments

Charge A:

The introductory paragraph refers to insurers' Big Data uses for marketing, rating, underwriting and claims.³ Yet, charge A states:

Review current regulatory frameworks used to oversee insurers' use of consumer and non-insurance data. If appropriate, recommend modifications to model laws/regulations, regulation of data vendors and brokers, regulatory reporting requirements, and consumer disclosure requirements.

We ask the working group to confirm that "if appropriate, recommend modifications to model laws/regulations" applies to more than regulation of data vendors and brokers, regulatory reporting requirements and consumer disclosure requirements – that the review may also include, if appropriate, modifications to requirements for marketing, rating, underwriting and claims. To clarify the intent, we suggest:

Review current regulatory frameworks used to oversee insurers' use of consumer and non-insurance data. If appropriate, recommend modifications to model laws/regulations regarding marketing, rating, underwriting and claims, regulation of data vendors and brokers, regulatory reporting requirements, and consumer disclosure requirements.

Charge B:

The revised charge B continues to include language suggesting NAIC regulatory review of Big Data models. As our attached comments to the Casualty Actuarial and Statistical Task Force on this issue explain, the need is for the NAIC to provide a resource for the states and not a "regulatory review." There should be no question about "preserving" state authority because the charge should be limited to developing an NAIC resource to assist the states in this area – in the same way that the NAIC has developed resources to assist states in other areas which have never involved the NAIC in a regulatory role. For example, the NAIC developed a resource for the states for collection of Market Conduct Annual Statement data with no question that the NAIC was simply a resource to the states and without any regulatory authority. We suggest the following to clarify the intent:

³ "The mission of the Big Data (D) Task Force is to gather information to assist regulators in obtaining a clear understanding of what data is collected, how it is collected and how it is used by insurers and third parties in the context of marketing, rating, underwriting, and claims.

Propose a mechanism to provide resources to states for technical analysis of and data collection related to states' review of complex models used by insurers for underwriting, rating, and claims. Such mechanism shall respect and in no way limit states' regulatory authority.

Charge C:

We continue to strongly support charge C.

Thank you for your consideration.