

**Supplemental Comments of the Center for Economic Justice
Regarding Proposed 2016 Big Data Charge for D Committee**

December 10, 2015

The Center for Economic Justice (CEJ) writes to respond to industry trade comments on the proposed Big Data charge.

AIA

The AIA proposes three changes, two of which are non-substantive and helpful. We do not object to these two non-substantive changes, would support their adoption and thank the AIA for construction dialogue.

The third proposed change is to delete marketing issues related to big data from the charge. **CEJ objects to the deletion of marketing from the proposed charge.**

One of the major issues with insurers' use of big data is the ability to channel consumers based on big data analytics during the shopping process. For example, a consumer searching for auto insurance at an aggregator web site or an insurer web site might enter identifying information and the web site may then pull information about that consumer in real time from data brokers or web use scoring vendors to channel the consumer to a particular insurer (e.g., non-standard), company within a group, rating tier or products.

The issue has been identified by consumer organizations and regulatory agencies, as cited in our initial comments. We attach slides from a presentation on "weblining" to illustrate the issues with big data channeling of consumers through marketing. The use of big data in marketing is a critical part of the big data and insurance exploration.

NAMIC

NAMIC argues that the proposed charge is biased and not needed. We disagree with the argument about bias, but suggest that the AIA's non-substantive edits address the concern.

We also disagree that the charge is not needed. NAMIC argues that the D Committee has other broad charges that allow exploration of big data issues. This is a non sequitur argument. The purpose of the charge is to identify and focus some D Committee activities on big data issues – both to continue the Committees work on the issue from 2015 and to keep insurance regulators abreast of big data issues. **The purpose of a charge is to focus a Committee's activity and the proposed charge does this, while the broad charges identified by NAMIC do not.**

PCI

PCI takes a shotgun approach in its opposition to the charge, apparently fearing any public accountability of insurers' use of big data. However, the knowledge regulators and the public have gleaned from the public hearing on Big Data and Claims and the work on price optimization and telematics – as well as the work on big data from other financial service product regulators – **makes clear that such ongoing exploration is reasonable and necessary.**

PCI's efforts to muddy the proposal are laughable. PCI starts by complaining that the proposed charge was proposed by an interested stakeholder – an “advocate” – and a “shortened” exposure period. **CEJ admires PCI'schutzpah for complaining about transparency at the NAIC** – when the NAIC has precisely the transparency procedures that PCI complains are missing from the IAIS. We admire PCI's brazen ability to take diametrically opposed position on transparency in different forums.

PCI complains about “advocates” throughout its comment letter, implying that the consumer representatives and organizations that represent consumer are somehow biased in a way that PCI is not. PCI is attempting to somehow frame their view as something other than advocacy – an absurd position given that PCI is an advocacy organization for insurer interests. **While we welcome PCI's advocacy, its attempt to diminish other stakeholders by pejoratively referring to us as advocates is hypocritical.**

PCI next tries to scuttle the proposed charge by offering a “compromise.” The “compromise” is to rewrite and completely change the charge. **We oppose the PCI edits in their entirety and suggest the proposed edits are a Trojan Horse to prevent the Committee from adopting any charge.**

The PCI objections are without merit. PCI argues that the charge “presumes” there are big data issues regulators cannot manage under existing, law, regulation or resources. Of course, there is no such “presumption” in the proposed charge. Rather, the proposed charge keeps regulators active on an issue that has raised and will continue to raise challenges for regulators – in the same way that price optimization has raised challenges for regulators.

PCI next objects that the charge is “broad and limitless” with the result that the consumer organizations that proposed the charge will criticize the NAIC for not taking action. Stated differently, PCI wants regulators to oppose exploring big data issues because the failure to even investigate will somehow prevent stakeholders from criticizing regulators' lack of action. Putting aside the complete lack of logic in this comment, the objection is simply a criticism of consumer stakeholders by an industry advocate.

PCI's next objection is that the proposed charge is a "boundless" invitation to "advocates" pushing "their agendas" at the expense of everyone. **Once again, PCI is criticizing consumer representatives –not only for representing consumers but also for actions that consumer representatives have not proposed or engaged in.**

In summary, PCI's complaints about "advocates" and "lack of balance" are without merit and without any evidence. We reject the PCI comments and urge Committee members to do the same,

Thank you for your consideration.