CENTER for ECONOMIC JUSTICE | FAIR ACCESS FAIR TREATMENT

Comments of the Center for Economic Justice

To the NAIC Anti-Fraud Task Force

December 3, 2017

The Center for Economic Justice writes to urge the Task Force to adopt an additional charge related to big data and algorithms used for anti-fraud efforts. The proposed charge is

> Review anti-fraud algorithms for potential bias against particular groups of consumers and to ensure fair treatment of consumers. Coordinate with the Big Data Working Group

The charge is important and necessary.

Anti-fraud efforts have become increasingly reliant on algorithms and big data for identifying suspicious claims not only throughout the claims settlement process – from first notice of loss through claim settlement – but also in initial underwriting – the algorithm indicates a higher likelihood of filing a fraudulent claim so we won't write this consumer or business.

There are well known concerns – not just from consumers but from data scientists and model builders – that algorithms are susceptible to bias for at least two reasons – biased data and biased modelers. This bias does not have to be intentional. Consider that in developing any type of predictive model you start with data of the thing you want to predict – in this case fraudulent claims – and then you search for characteristics of the consumer, vehicle, property or other to use as predictors. If the data for the thing you are predicting – fraudulent claims – reflect historical discrimination for any reason – then the algorithm will replicate that discrimination. It is reasonable to be concerned that historical claims identified as fraudulent might reflect biases in what types of consumers file fraudulent claims.

Another concern relates to the types of data used to predict fraudulent claims. Allstate announced this week its use social media data-based algorithsm produced by Carpe Data for fighting fraud. This is clearly the type of big data and algorithm that regulators should be looking at to ensure fair treatment of consumers.

A third concern is the use of machine learning in anti-fraud algorithms, in which the algorithm changes itself without any human intervention. This raises concern over accountability to insurers, regulators and consumers. There was an article in the New York Times this past week describing data scientists' concern with accountability of algorithms with machine learning.[1]

These concerns with big data algorithms are mainstream and justify review of specific applications – such as insurance anti-fraud applications – by regulators charged with protecting consumers. If members of the Task Force are net yet familiar enough with anti-fraud big data and related algorithms, then this proposed charge is even relevant and important.

Industry Opposition Based on Factually Incorrect Claims Raises Additional Concern

Industry "strongly opposes" the new charge, arguing only that it is appropriately under the purview of the Big Data working group. First, this characterization of the Big Data Working Group's activity is factually incorrect. The Big Data working group is looking at broader regulatory issues and structures related to big data, not examining specific big data applications.[2]

Charge 1 – review regulatory framework

Charge 2 – propose an NAIC resource to assist states in reviewing complex models

Charge 3 – assess data needs for monitoring the marketplace

Clearly, the proposed charge does not duplicate or even overlap any of these charges.

Industry's arguments are further proven false by the fact that other NAIC groups are examining specific types of big data algorithms – CASTF for p/c pricing algorithms and LATF for accelerated underwriting for life insurance. A review of anti-fraud big data algorithms by this Task Force would enable the Task Force to inform the work of the Big Data Working Group.

In summary, the industry argument regarding the Big Data Working Group's charges is factually incorrect. The Big Data WG needs subject-matter task forces and working groups to examine relevant big data issues to inform the work of the Big Data WG. These issues are so broad that one working group alone cannot do it all. To be clear, the industry proposal – leave this issue to the Big Data WG – will result in no review of these important anti-fraud algorithms for the foreseeable future.

[1] https://www.nytimes.com/2017/11/21/magazine/can-ai-be-taught-to-explain-itself.html?_r=0
[2] The Big Data Working Group charges are provided on the last page of these comments.

Second, industry argues that the composition of the big data working make it better position to examine or review big data and algorithms used for anti-fraud. This is totally illogical. Who better to understand the intricacies of anti-fraud efforts and how big data and algorithms can and should fit in to these efforts than regulators who work on anti-fraud efforts all the time?

Third, and more troubling, is the fact that industry opposes the task force examining this issue. These algorithms are clearly a big and growing tool of insurers in anti-fraud. It only makes sense for regulators to be looking at the effectiveness and fairness of these tools. Industry's opposition causes us concern that industry is trying to hide their practices from consumers and regulators.

In conclusion, there is clearly a need for regulatory review of the large and growing use of big data and algorithms in anti-fraud efforts and our proposed charge reflects this need. Industry opposition is based on factually incorrect assertions and the opposition itself further supports the need for this charge.

2017 (and 2018) Charges of the Big Data Working Group:

1. 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.

2. Propose a mechanism to provide resources and allow states to share resources to facilitate states' ability to conduct 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.

3. Assess data needs and required tools for regulators to appropriately monitor the marketplace and evaluate underwriting, rating, claims, and marketing practices. This assessment shall include gaining a better understanding of currently available data and tools and recommendations for additional data and tools as appropriate. Based upon this assessment, propose a means to collect, house, and analyze needed data.