



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

April 8, 2017

The Center for Economic Justice has been an active participant in the Big Data working group since its creation and **we support the proposed work plan**. The plan reflects two years of work by the Big Data working group to hear from a variety of stakeholders and experts on issues involving Big Data, insurance and insurance regulation. The work plan is the result of a deliberative process and continues to approach the variety of issues raised by insurers' use of Big Data in a balanced and deliberative manner. We urge the working group to proceed on these important issues.

We support the proposal to add a timeline and prioritize some of the activities listed in work plan. We support the inclusion of all the issues listed, however, as taxonomy of the issues the working group has learned about and will consider in carrying out its charges.

We do not oppose a change in wording to broader concepts of unfair discrimination beyond disparate impact, but stress the importance of disparate impact as issue for the working group to consider. We do not mean disparate impact as a legal standard in this context, but disparate impact as the intentional or unintentional discrimination against protected classes through Big Data algorithms. In an earlier era of much simpler rating plans, it was reasonable to expect that prohibiting insurers from explicitly considering race, religion or national origin, for example, would prevent discrimination on those bases. But in an era of Big Data when data mining can be used to predict or identify proxies for any consumer characteristic, regulators need the ability to identify disparate impact. There is no reason to allow indirectly that which is directly prohibited.

As explained below, we reject the PCI criticism that the work plan is anti-innovation. There is much in the work plan to promote innovation compatible with consumer protection. Toward this end, we suggest adding to work stream C examining the possibility of regulatory data collection and publication of individual consumer market outcomes. Such data could empower consumers to promote more competitive and responsive markets in the same way that data on auto safety and gas mileage empowered consumers to push automakers for safer and more efficient vehicles.

Although PCI disavowed their written submission at today's working group meeting, we respond to the PIC written submission below for the record.

As stated many times, we believe insurers' use of Big Data holds great promise for empowering consumers and promoting more competitive markets, improving availability and affordability of critical insurance products for consumers and enhancing the interaction between insurers and consumers. But, along with the great promise of Big Data come a number of concerns which can and should be addressed to ensure the promise of Big Data becomes a reality. Consumer protection and insurer accountability to consumers over insurers' use of Big Data is compatible with innovation.

More important, insurers' use of Big Data has transformed the relationship between insurers and consumers and between insurers and regulators, vastly increasing insurers' market power versus both regulators and consumers. The current regulatory framework is strained by the insurers' increasing use of data outside of insurance regulatory oversight and by pricing and claim settlement practices based on complex algorithms with limited or no transparency to regulators and consumers.

Over the past several years, CEJ and others have documented a variety of current and potential problems with insurers' use of Big Data – practices that have nothing to do with the beneficial innovation we all seek and everything to do with insurers' moving to less accountability to regulators and consumers. We have given numerous examples of practices which have great potential to reflect and perpetuate historical discrimination and which stretch or break compliance with fundamental statutory prohibitions against unfair discrimination

We note that PCI continues its opposition to the work of the Big Data Working Group, ignoring the past two years of work by the working group to review and identify issues of concern to regulators and consumers. We also note that PCI opposed the working group's charges last year and PCI's proposals clearly attempt to undermine these charges with a new set of activities that leaves insurers' use of Big Data unaccountable to consumers.

PCI proposes that industry be able to demonstrate the benefits of insurers' use of Big Data in private sessions with regulators, depriving consumer and other stakeholders of the opportunity to weigh in and identify errors and false statements. We see an example of what this would look like with Lawrence Powell presenting an error-filled rehash of PCI's position with a pseudo-academic veneer. PCI and insurers like the regulatory model in which they can "explain" their practices in private to regulators without pesky consumer advocates pointing out false and misleading claims as we will do with the Powell paper.

Contrary to PCI's claims, the work plan continues a dialogue between regulators and insurers, but also continues to involve consumer and other stakeholders in the discussion. Regulators and legislators benefit from a variety of voices and expertise, not just insurers and their agenda-driven "facts."

The PCI claim that the work plan will inhibit innovation is also ridiculous. It is based on the premise that so-called innovation cannot occur unless insurers have no accountability to consumers. PCI's intent is clear to consumer stakeholders and we hope it is clear to regulators. PCI intends to do its best to thwart movement towards improved insurer accountability to enable insurers to institutionalize whatever practices they want – regardless of fairness or outcomes – and then claim some groups of consumers will suffer if insurers are forced to stop the unfair practices. We have seen this game plan with insurance credit scoring.

PCI's claim that no evidence has been presented to the working group is outrageous and wrong. PCI is gaslighting¹ the working group and the NAIC. PCI asks the working group to ignore everything you have heard from stakeholders over the past two years and accept only the "facts" as PCI sees them. PCI wants the working group to focus on aggregate measures while ignoring the fundamental distributional issues associated with insurance.

PCI's claim that there is no need for an NAIC mechanism to assist states in data collection and technical analysis of complex models is contradicted by the fact that the regulators reviewing the models have stated their need for such assistance. This type of bald falsehood by PCI runs throughout their screed.

¹ **Gaslighting** is a form of [manipulation](#) that seeks to sow seeds of doubt in a targeted individual or members of a group, hoping to make targets question their own memory, perception, and sanity. Using persistent [denial](#), misdirection, contradiction, and [lying](#), it attempts to [destabilize](#) the target and delegitimize the target's belief.

PCI's claim that the need for additional regulatory data collection is undocumented and without cost-benefit analysis is yet another example of a clearly false statement. In an era of Big Data, regulators can and should collect more granular data on insurer market outcomes. Such enhanced data collection is highly cost-effective because it eliminates the vast majority of special data calls and focuses market regulation efforts more precisely at problem markets and companies. PCI's objection to better regulatory data collection directly contradicts two of its other complaints against insurance regulation – too many data calls and expensive market conduct examinations.

PCI's opposition to regulatory Big Data also reveals the bias in industry's view of innovation. By collecting granular data on consumer market outcomes – particularly in the area of claims – and publishing these data, regulators could either create or promote development of innovative shopping tools that allow consumers to compare insurers actual market performance on, for example, what percentage of claims are denied, what percentage of claims go to litigation, how long claims take to settle and more. This type of innovation in insurance would empower consumers in the same way that the IIHS rating of automobile safety empowers consumers and encourages automakers to improve auto safety.

PCI's comments reveal they will continue to obstruct the reasonable and balanced approach taken by the working group and we urge that the working group reject the PCI comments.