Comments of the Center for Economic Justice to the

NAIC Big Data Working Group

August 19, 2016

The Center for Economic Justice (CEJ) submits the following recommendations to the Big Data Working Group for the 2017 proposed charges called for in the Working Group's 2016 charge.

Regulatory Big Data and Regulatory Resources

1. Develop a template for states to use to request from insurers the sources and uses of data for various insurance functions by the 2017 Spring National Meeting. The template shall provide for reporting by the insurer of the name and description of each source of data, the source of the data and the use or uses of the data including pricing (including underwriting), marketing, claims settlement, antifraud and other. Develop a proposal for NAIC assistance to the states in the collection and compilation of the requested information reported by insurers.

2. In coordination with the Casualty Actuarial and Statistical Task Force and the Market Analysis Procedures Working Group, develop a proposal for an NAIC Resource to assist states in the collection and analysis of granular data for market analysis and in the analysis of complex pricing and claim evaluation/settlement models by the 2017 Summer National Meeting. The proposal shall be limited to the NAIC Resource providing data management and analysis to states and shall not provide any role for the NAIC in states' regulatory opinions.

3. In coordination with the Casualty Actuarial and Statistical Task Force and the Market Analysis Procedures Working Group, develop a proposal for reporting by insurers of granular data on market outcomes by the 2017 Fall National Meeting. The proposal shall be limited to personal lines property and automobile insurance and shall include proposed data elements and a proposed reporting mechanism.

<u>Insurer Responsibility and Consumer Protections for Insurers' Use of Big Data</u>

4. Develop a model law describing insurer responsibilities and consumer rights regarding insurers' use of big data by the 2018 Summer National Meeting: The model law shall include, at a minimum, requirements, for:
    a. insurers' submission of big data sources and uses to regulators,
    b. insurers' submission of big data algorithms and related insurer data to regulators,
    c. protection of personal consumer information and insurer trade secrets in the big data-related submissions to regulators;
    d. insurers' disclosure and consumer protections related to insurers' big data usage, modeled after the disclosure and consumer protection requirements for users of information provided by consumer reporting agencies pursuant to the Fair Credit Reporting Act including, but not limited to:
        i. disclosure by the insurer to the consumer of intended use of the data;
        ii. consent by the consumer to the insurer's use of the data
        iii. clear and specific disclosure by the insurer to the consumer of potential outcomes if the consumer declines permission to use the data;
        iv. adverse action notice by the insurer to the consumer if the use of the data results in an adverse action
        v. disclosure to the consumer of the actual consumer's data used for inspection by the consumer;
        vi. ability of the consumer to correct erroneous information;
        vii. reassessment of the data by the insurer if data are corrected; and
        viii. a provision for life events exceptions to use of the data if the life event may result in unfavorable data due to events outside of the consumer's control.

<u>Ownership and Consumer Protections for Consumer-Generated Data Related to Insurance</u>

5. Develop a model law regarding ownership and licensing of data generated by consumers, vehicles or properties and used by insurers, including, but not limited to, data generated by vehicle telematics, home or property telematics, mobile phones and wearable devices by the 2017 Fall National Meeting. The model law shall declare that such data is owned by the consumer and shall include provisions for licensing of such data by consumers to insurers in a manner that balances consumer protection and sovereignty with insurer and public needs for access to such data loss prevention and mitigation and innovation in insurance products and insurer-consumer interaction. Such licensing provisions shall include, but not be limited to:

a.   consumer-tested disclosure to consumers of the sources and uses of the consumer-generated data;
b.   affirmative agreements – opt-in – by the consumer for collection of the data and for each intended use of the data;
c.   prompt access to the consumer-generated data by the consumer upon request with provision of the data by the insurer to the consumer in a format and medium which, among other things, allows consumers to take the data to another insurer;
d.   prohibition against use of the consumer-generated data by the insurer for any purpose other than those agreed to by the consumer;
e.   prohibition against sale of the consumer-generated data by the insurer to any third-party without affirmative consent by the consumer and compensation to the consumer by the insurer; and
f.   standards for all-industry databases of specific types of consumer-generated data.