

**Comments of Civil Rights, Consumer, and Community Organizations
To the NAIC Committee on Race and Insurance
November 10, 2020**

The undersigned civil rights, consumer, and community organizations offer these comments to the National Association of Insurance Commissioners (NAIC) Committee on Race and Insurance with the hope that you will take on this project with the same urgency felt by the millions of Americans who bear the brunt of systemic racism in insurance markets and so many other areas of our society. While we are responding to the Property/Casualty workstream request for comments on the activities it should pursue, our comments are relevant and applicable to the Life/Annuity and Health workstreams (all three together referred to below as “line of business workstreams”).

For decades, consumer stakeholders have called upon the NAIC to take action to address unfair underwriting, pricing, and other practices that have disproportionately harmed communities of color. Insurers and their trade associations have often made the false claim that companies cannot be discriminating on the basis of race or ethnicity if they do not explicitly consider race in their practices. That, of course, entirely misunderstands the notion of disparate impact and the way systemic racism insinuates itself into so many aspects of economic life.

We are pleased that this committee has been formed, and we urge that you to avoid meetings with debates about the existence of systemic racism but instead to move quickly to identify the places it appears and develop the strategies needed to address it. As we set out below, the priorities for the line of business workstreams should be to develop the guidance for insurers to test for disparate impact and to develop a market regulation data regime that helps insurers improve and enable regulators and stakeholders to hold insurers accountable for their practices while setting clear expectations for insurer conduct.

1. Require insurers to examine every aspect of their operations – marketing, underwriting, pricing, claims settlement, and antifraud – for proxy discrimination against protected classes.

There is no dispute that systemic racism affects certain insurer practices. There are glaring examples and the task for regulators and insurers is to employ well-known and time-tested disparate impact analyses to identify and then minimize such disparate impact. One of the first activities of the line of business workstreams should be to develop guidance for how insurers test for disparate impact and report those findings to regulators and the public.

The line of business workstreams should also prioritize the practices that most obviously implicate systemic racism, including:

- Customer lifetime value scores
- Consumer credit information and scores
- Education, occupation and household composition information and scores
- Antifraud algorithms and propensity for fraud scores
- Criminal history information and scores

- Social media information and scores
- Telematics/Internet of Things offers, information and scores

These types of information and algorithms are used for multiple aspects of insurer operations – marketing, pricing, claim settlement, and antifraud. Consequently, insurers should be required to perform and report the results of disparate impact analyses on any practice involving these types of information.

The line of business workstreams should not only develop the guidance and priorities for insurers to analyze and minimize disparate impact but should also memorialize these requirements and guidance in a model law, guideline, or bulletin.

2. Develop a more robust and granular program of data collection for market regulation.

The inadequacy of insurance market regulation data collection has long been criticized by consumer stakeholders and academics for the inability of regulators and stakeholders to assess insurance consumer market outcomes. For mortgage and small business lending, federal regulators regularly collect and publish data through the Home Mortgage Disclosure Act and CRA small business lending data. These data have enabled lenders, regulators, academics, and fair housing, civil rights, and consumer organizations to analyze the impact of race on various types of lending. In contrast, insurers have sued to keep even data aggregated at the ZIP Code level confidential and hidden from public view.

Any serious effort by insurance regulators to address systemic racism in insurance should include dramatic improvements in reporting by insurers of consumer market outcomes at a granular detail sufficient to analyze the impact of race on insurance outcomes – whether those outcomes are marketing, underwriting, pricing, claims settlement or antifraud.

A second priority of the line of business workstreams should be to develop a market regulation data program sufficiently robust for timely public analysis of disparate impact in insurance. This improved data reporting and publication should be memorialized in a model law, guideline, or bulletin.

3. Demonstrate a commitment to this work by directing as many or more resources toward addressing systemic racism in insurance as the NAIC does for other priority projects, such as group capital standards, long term care insurance, principles based reserving, or amending the anti-rebating provisions of the Unfair Trade Practices Model Act.

Following the murder of George Floyd, NAIC leadership offered strong words regarding regulators' commitment to address systemic racism in insurance. Those words must be supported with a commitment of resources and time to this project. As is often said, a budget is a reflection of the values of an organization, and we believe that focusing significant resources on solutions to systemic racism in insurance, such as the two priorities we set out above, is critical if the NAIC is to meet the demands of this moment.

Sincerely,

Alaska PIRG
Center for Economic Justice
Consumer Action
Consumer Federation of America
Consumer Federation of California
Consumers for Auto Reliability and Safety
Consumer Reports
Consumer Watchdog
CPAN, The Coalition Protecting Auto No-Fault
Kentucky Equal Justice Center
Maryland Consumer Rights Coalition
Minnesota Asset Building Coalition
National Community Reinvestment Coalition
Strategic Actions for a Just Economy
Texas Appleseed
Vehicles for Change
Virginia Citizens Consumer Council