

September 5, 2017

Commissioner Ted Nickel
President, National Association of Insurance Commissioners

By electronic mail

Re: Auto Study Group “Data Collection” – Flawed Process Leads to Flawed Outcomes

Dear Commissioner Nickel,

We write to express our dismay concerning the action of the Auto Insurance (C/D) Working Group (“Auto WG”) at the Summer National Meeting in Philadelphia and to ask that the decision and action be revisited with appropriate time for comment and deliberation.

The Auto WG adopted a data collection/affordability analysis proposal from industry that was radically different from a regulator-developed proposal that had been exposed for several months. The industry proposal was first posted on August 2, 2017, just four days before the Auto WG adopted it – after giving non-industry stakeholders four minutes to comment. The flawed process resulted in a flawed outcome and raises troubling questions about the role and authority of statistical agents.

In addition to asking that the NAIC direct the Auto WG to revisit the action by exposing the industry proposal for comment accompanied by sufficient opportunity for stakeholders to present views to the Auto WG, we also ask the NAIC to examine why statistical agents appointed or licensed by regulators to act as the regulator’s agent for data collection refuse to provide regulators with the data that regulators have required insurers to report. The statistical agents’ refusal to provide individual insurer data to regulators is outrageous and needs to be addressed. We suggest that the states consider replacing the current statistical agents, who have failed to put regulators as a top priority, with the NAIC as the statistical agent for personal lines property and casualty insurance – just as the NAIC replaced a private statistical agent with the NAIC as a statistical agent for life insurance, annuities and long-term care as part of the principle-based reserving effort.

The remainder of the letter describes in detail the flawed process used by the Auto WG – adopting the industry-proposed data collection after a few days’ notice with almost no opportunity for non-industry stakeholders to comment – and explains why the industry data proposal is fatally flawed for purposes of an objective and meaningful analysis of auto insurance affordability and availability.

What Happened? A History of the Auto WG and Data Collection for Analyzing Affordability

Since its creation in 2012 to examine issues of affordability and availability of auto insurance¹, the Auto Study Group has considered a request for data from insurers to perform an objective and meaningful study of auto insurance affordability. The issue became more urgent when the Federal Insurance Office (“FIO”) adopted an affordability methodology coupled with FIO collection of data from insurers because the FIO affordability index failed to provide information useful for analyzing causes of affordability problems and because state insurance regulators should have been leading the way on an issue of great interest to a number of stakeholders, including Congress.

After years of discussion on data collection for an affordability study (with consistent industry objection to either data collection or a study of affordability), the Auto WG decided at the Summer 2016 National Meeting to draft a proposal for data collection for a study of affordability and availability.² A proposal drafted by regulators from California, Missouri, Oklahoma and Pennsylvania dated December 1, 2016 was exposed for comment at the December 10, 2016 Auto WG meeting. Numerous comments were submitted by stakeholders by January 31, 2017. The proposal and comments were discussed at the Spring 2017 National Meeting and the WG adopted a motion to move forward with a data call. The data collection proposal was discussed during a May 2017 WG conference call with a decision to move forward.³

A (slightly) revised data call was posted for comment in June 2017 with comments due by July 31, 2017. The proposal was also discussed during a July 17, 2017 Auto WG conference call. Several stakeholders submitted comments. Consumers Union, the publisher of *Consumer Reports*, Consumer Federation of America, and Center for Economic Justice supported the draft, with some suggestions for improving the data collected.⁴

At the last minute, the insurance industry, which for years fought any real data collection by the NAIC on these matters, proposed a radically-different data collection approach. The industry proposal was first made available to non-industry stakeholders on August 2, 2017 – four days before the August 6, 2017 Auto WG meeting in Philadelphia.

¹ The 2012 charges added: Appoint an Auto Insurance (C/D) Working Group, a joint working group of the Property and Casualty Insurance (C) Committee and the Market Regulation and Consumer Affairs (D) Committee, to review issues relating to low-income households and the auto insurance marketplace and to make recommendations as may be appropriate.

² Minutes of the August 26, 2016 Auto WG meeting state: Commissioner Doak made a motion, seconded by Mr. Angell, to ask a group of states to share information and create a proposal concerning data needed to study affordability and availability issues. The motion passed

³ The meeting minutes state, “Commissioner Kerr said the small group of states will continue to refine data elements, create definitions and identify any state -specific differences that would be needed. He said a draft data call should be completed by the week of June 5. Commissioner Kerr said the draft data call would be shared with all parties for feedback.”

⁴ The letter can be seen at <http://consumerfed.org/wp-content/uploads/2017/08/cfa-cej-cu-letter-naic-auto-working-group-data-call.pdf>

The approach was forwarded to the NAIC by PCI, who wrote, “Assuming a project is to go forward, PCI supports the statistical agents’ alternative to enable regulators to achieve the Working Group’s goals quickly and efficiently, working with the statistical reporting agencies (ISS, ISO, etc.) to report aggregate data on auto insurance premiums, claims and losses, limits, and deductibles by zip code (where available). The low-burden/high-information alternative would directly answer the questions under the charge and applicable law. We incorporate by reference the statistical agent proposal and respectfully ask the NAIC to accept it, if this project moves forward.”

Another trade group of insurers, NAMIC, also supported the approach sprung on the regulators, saying, “Fortunately, a consortium of statistical reporting agents has developed a plan for collecting and reporting aggregate industry data in a manner that would not significantly burden insurers while not running afoul of state confidentiality laws – and it could be completed, according to the statistical agents, in just three months.”

The first time that non-industry stakeholders learned of the specific industry proposal – including proposed data elements and refusal to provide individual insurer data – was when the comments to the Auto Study Group were first posted on August 2, 2017. Four (4) days later, at its Philadelphia meeting, the Auto WG adopted the industry proposal. At the Auto Study Group meeting, CEJ (the only non-industry stakeholder to speak) was given four (4) minutes to comment on the industry proposal. After years of discussion, months of exposure of a completely different proposal, the Auto Study Group adopted a radically different data collection proposal with non-industry stakeholders having barely a few days to review and a handful of minutes to comment. Clearly, this was a flawed process and, predictably, it resulted in a flawed outcome – the provision of only those data hand-picked by industry that fails to allow a meaningful analysis of auto insurance affordability.

Flawed Data, Unusable Analysis

The data industry is willing to give regulators are unsuitable for an objective and meaningful analysis of auto insurance affordability and availability for several reasons.

- The data are hand-picked by industry to support industry talking points, not to allow an objective analysis.
- The data won’t allow a meaningful or substantive analysis of affordability and availability because of limited data elements developed for ratemaking and not for market analysis and because of reliance on industry aggregate data instead of individual company data.
- The data can’t be verified as correct or complete because of statistical agents’ refusal to provide individual insurer data.

Statistical Agents Conflict of Interest

The statistical agents have unmanageable conflicts of interest. One statistical agent – ISS – is a wholly-owned subsidiary of PCI – the same trade association of insurers that has consistently opposed an affordability analysis. Two other of the statistical agents – NISS and AAIS – are managed by a board of directors comprised of the insurance company members who use NISS and AAIS as statistical agents. And ISO, the fourth statistical agent – is part of Verisk, a publicly-traded insurance services company whose \$2 billion in annual revenues comes predominantly from insurers.

We have no confidence that ISS will provide accurate data if it shows redlining given that ISS is an arm of the trade association that fought against insurer accountability for their pricing practices for decades. Or that ISO, which is dependent on industry money, will put forth data documenting consumer stakeholder concerns, should the data so indicate. Despite the massive conflicts of interest of the statistical agents, regulators and non-industry stakeholders have no ability to verify the accuracy or completeness of the data provided by the conflicted statistical agents.

Data Can't Be Verified for Accuracy or Completeness

The data collected and used for this industry-sponsored effort will be data that the insurers want to supply; they are not under any requirement to supply all the data. The statistical agents have already indicated that some unidentified insurers may be excluded from the data, if the data for the period are not complete or otherwise don't pass some undisclosed quality checks, and adjustments will be made to the data. The statistical agents often massage or "smooth" data prior to submission to regulators; we can only expect the same with this data set.

The data can't be verified as accurate or complete because of the statistical agents' refusal to provide individual insurer data. Absent individual insurer data, there is no ability to identify whether data has been massaged or omitted. Some insurers may be excluded from the database completely, in certain states or even in certain ZIP Codes. Reviewers will not be able to determine the impact of such data manipulations.

Individual Insurer Data Is Essential and Was Always Contemplated

A meaningful and robust analysis of auto insurance affordability and availability requires the collection and analysis of individual insurance company experience. The basic purpose of the data collection and study effort is to determine whether or not there are affordability and availability problems faced by certain groups of consumers. An equally important purpose is to reveal whether individual company's practices tend to harm lower-income and minority communities. Industry-aggregate data – even at the ZIP Code level – cannot make either of these determinations, and even more so if some undisclosed amount of data are to be removed, adjusted, or smoothed.

As an example of the importance of individual insurer data, consider the following: research undertaken by CFA shows that some of the major insurers refuse to quote in many ZIP Codes for people with perfectly clean driving records who have socio-economic characteristics that indicate that they might be lower-income. Other insurers do not do this. Obviously, not quoting for good drivers diminishes competition for those drivers and may drive auto insurance prices to unaffordable levels. Aggregate data would mask this sort of problem and leave regulators without any indication of what might be driving unaffordability. Further, if an insurer is not quoting in certain ways, it could amount to a new form of redlining that regulators should be investigating. Additionally, patterns of sharp price increases in certain classes by an insurer might reveal discriminatory pricing against protected classes such as minorities or the poor.

The discussion of data collection for analyzing availability and affordability has always contemplated individual company reporting because it has been widely-agreed and understood that individual reporting of data is essential to ensure data accuracy and data quality and to provide the level of data detail essential to produce an analysis that answers key policy questions instead of pushing the issues down the road

Data Elements for Ratemaking Are Inadequate for Analyzing Affordability

Unlike the regulator-drafted proposal, the industry proposal won't allow an objective and meaningful analysis of auto insurance affordability and availability – for many reasons.

- The absence of individual insurer data prevents necessary analysis of availability – which insurers are writing in which ZIP Codes at what prices? Are certain ZIP Codes served primarily by non-standard insurers only?
- The absence of data unavailable to statistical agents prevents meaningful analysis. Unlike the regulator-drafted proposal that provided comprehensive data collection, the statistical agents will only provide the data they currently have – in just 20 states, leaving 30 states where ZIP Code data will only be available from insurers that choose to provide it.
- Unlike the regulator-drafted proposal, with the industry proposal, there is no way to relate average premiums to amount of insurance (\$1,400 for basic limits is different than \$1,400 for 250/500). According to the statistical agent approach, “Liability limit detail is collected by several of the statistical agents and the distribution of limits provided by those could be used to estimate the overall limit distribution by ZIP Code as well.” By leaving this to estimation, the calculation can be manipulated to produce desired results.
- Unlike the regulator-drafted proposal, the industry data will be devoid of information on sales quotes versus actual sales, policies canceled for non-payment of premium or other information about actual market outcomes for consumers.

- Unlike the regulator-drafted proposal, the industry data provide no paid losses or paid loss development, preventing a good test of both incurred losses and incurred loss development. Absent these paid claims data, there is no ability to determine if claims handling varies among ZIP codes in ways that might, for example, diminish the value of an insurance policy in one community relative to its value in another.
- Unlike the regulator-drafted proposal, the industry data provides no breakout of closed claims between claims closed with and claims closed without payment, further making analysis of claims practices by ZIP Code impossible.

The Provision of Data Limited to Proving Industry Talking Points Is Not Objective or Useful for Regulators and Stakeholders to Examine and Analyze Auto Insurance Affordability and Availability.

The insurance industry has had the opportunity to provide this data for five years, since the creating of the Auto Study Group in 2012. It was only when regulators were poised to move ahead with data collection for an objective and meaningful study did the industry “alternative” appear.

This is an industry study designed to affirm industry talking points. The NAIC should not be legitimizing an industry-controlled study as something meeting regulator needs or being overseen by regulators when neither is the case.

Arguments by Some Regulators in Support of Industry Proposal Show Flaws of the WG Action

Regulators from Oregon and Mississippi spoke in favor of the industry proposal, but their comments instead revealed the flaws of the Auto WG action. Oregon argued that the industry proposal was a first step and that a state could dig deeper if a state wanted to. But, the industry proposal provides nothing new for regulators – simply the data regulators have always had access to and which statistical agents have routinely provided to regulators. The industry-proposed data won’t allow a deeper dive because the data prevent the analysis and identification of actual affordability or availability issues.

In defending the industry-proposal at the Market Regulation and Property/Casualty Committees meeting in Philadelphia, Mississippi acknowledged a problem with the industry proposal – no distinction between standard and non-standard experience. Commissioner Chaney suggested he would get the industry to provide that breakout, but no revision to the industry proposal was offered or made. The fact that problems with the industry proposal were being discussed just hours after the Auto WG action is vivid evidence of the rushed and flawed process to adopt the industry proposal.

Need for New Statistical Agents Responsive to Regulators

The 2017 NAIC budget provided funds for the NAIC to develop the capability to act as a statistical agent for the life insurance, annuity and long-term care data need for implementing principles-based reserving – despite the fact that a private statistical agent was in place and despite the fact that MIB had never refused to provide regulators with requested data. The budget document explained the purpose

This initiative enables the NAIC to quickly respond to regulatory data collection needs, thereby improving state-based regulation and ensuring the data is collected in a consistent manner. It also avoids data collection efforts by private entities that may have conflicted interests or do not consider the goals of improving effectiveness and efficiency of regulatory oversight process a priority.

This statement describes exactly the situation with the private property/casualty statistical agents. It is outrageous that these statistical agents – agents who purportedly collect data on behalf of regulators – refuse to provide regulators with the data that regulators have authorized them to collect on behalf of the regulators.

The designation of the NAIC as the statistical agent for life/annuity/long-term care insurance data was intended to prevent the exact problem that regulators now actually encounter with ISO, NISS, ISS, and AAIS. We suggest that state insurance regulators consider replacing the current statistical agents, who have failed to put regulators as a top priority, with the NAIC as the statistical agent for personal lines property and casualty insurance – just as the NAIC replaced a private statistical agent with the NAIC as a statistical agent for life insurance, annuities and long-term care as part of the principle-based reserving effort.

Sincerely,

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