Mindset

July 1, 2021

By electronic submission to:

Board of Governors
Federal Reserve System
20th Street and Constitution Avenue N.W.
Washington, D.C. 20551

Re: Request for Information and Comment on Financial Institutions' Use of Artificial Intelligence, Including Machine Learning
Docket No.: OP-1743

To Whom It May Concern:

I write on behalf of the Insurance Coalition, a group of life and property and casualty insurance companies that share a common interest in federal regulations. In this case, we write in response to the request for information and comment ("RFI") on financial institutions' use of artificial intelligence ("AI"), including machine learning ("ML"), by the Board of Governors of the Federal Reserve System ("Board") and other financial regulators. As you know, several Insurance Coalition members are insurance savings and loan holding companies ("ISLHCs") and as such, may be directly affected by federal regulatory activity in this area.

In our view, AI and ML have enormous potential to provide significant consumer benefits across the insurance industry. AI/ML-enabled tools can expedite the underwriting process, improve claims processing, and enhance fraud detection capabilities. Together, these benefits create a more seamless consumer experience and help expand access to important insurance services. We are also mindful, however, of the potential for unintended consequences of these new technologies.

Insurance Coalition members take very seriously the need to ensure that algorithms are free from bias. Understanding and addressing concerns about the potential for algorithmic bias is critical to successful innovation across the financial services sector, including the insurance industry. We welcome this opportunity to comment and look forward to an ongoing dialogue to ensure responsible oversight of AI/ML technologies that protects consumers, fosters innovation, and appropriately considers the insurance industry's unique regulatory framework.

I. State Regulation of Insurance

Under the Dodd-Frank Act, insurance companies that are also ISLHCs are subject to oversight at the holding company level by the Federal Reserve.[1] However, per the McCarran-Ferguson Act ("McCarran-Ferguson"), enacted in 1945, the business of insurance is regulated by the states.[2]

[1] 31 USC § 313.
[2] 15 USC § 1011.

McCarran-Ferguson sets up a "reverse preemption" regime in which state laws regulating the business of insurance are not preempted unless Congress explicitly states its intention to do so in federal legislation.[3] State regulation of insurance includes solvency regulation and consumer protection regulation. This includes regulating policies, rates, and the conduct of insurance companies in the market through continuous market conduct examinations. All 50 states have an insurance commissioner who is charged with regulating insurance companies and their products. The National Association of Insurance Commissioners ("NAIC"), a non-governmental body comprised of the state insurance commissioners and staff, also establishes minimum accreditation standards for capital and other prudential requirements that are largely uniform across the states. While in all states AI tools are examined by regulators, AI oversight by states varies. In some states prior approval is required to use AI tools, while other states examine the use of AI as part of ongoing market conduct exams.

The NAIC's Innovation and Technology Task Force was established in 2019 to: (1) provide a forum for state commissioners to study the issues at the intersection of insurance regulation and emerging technologies; and (2) propose model laws and regulations for application to the insurance industry.[4] Within the Task Force is the Big Data and Artificial Intelligence Working Group, which specifically studies the use and impact of AI in the business of insurance and makes recommendations to the larger Task Force. In August 2020, the NAIC unanimously adopted a set of principles that originated from the Big Data and Artificial Intelligence Working Group, and which outline five key tenets for AI: Fairness, Accountability, Compliance, Transparency, and Security.[5]

State insurance regulation includes robust laws and regulations under which insurers currently operate, including privacy protections, safeguarding health information, and restrictions on unfair discrimination.[6] This includes prohibitions on the use of any factor in underwriting that is not indicative of risk.

The existing regulatory system applies to the use of AI, as well as to more traditional means of implementing the business of insurance. Through these regulations and authorities, state regulators are well-equipped to address insurers' use of AI/ML. In addition, there are actuarial standards of practice that detail appropriate behaviors and processes for dealing with data.[7] To the extent there is any future regulation of the use of AI by insurers, it should be harmonized with the existing regulatory framework of the insurance industry. New standards should only be implemented after carefully considering the importance of harmonization of definitions and standards between states and the federal government, existing efforts by the NAIC and state insurance commissioners to regulate the use of AI/ML in the business of insurance, and interaction with existing federal banking regulations that apply to insurance companies.

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[3] *Id.*
[4] National Association of Insurance Commissioners (NAIC), Innovation and Technology (EX) Task Force, NAIC, June 30, 2021, https://content.naic.org/cmte_ex_ittf.htm.
[5] *Id.*
[6] *See, e.g.*, NAIC Insurance Information and Privacy Protection Model Act (1992); NAIC Privacy of Consumer Financial and Health Information Regulation (2017); NAIC Unfair Trade Practices Model Act (2004).
[7] *See, e.g.*, Actuarial Standards Board, Actuarial Standard of Practice No. 23 on Data Quality (2011).

II. Examples of Uses of AI by Insurers

AI/ML technologies have a wide array of existing and potential applications for the business of insurance that would allow for lower costs and improved customer experiences. A recent McKinsey & Co. study asserted data analytics and predictive modeling could potentially transform the industry from one focused on "detect and repair" to "predict and prevent."[8] The major areas in which AI/ML technologies are and could be deployed by the insurance industry include underwriting, claims processing, fraud detection, and consumer protections.

Underwriting

Risk-based pricing is fundamental to the business of insurance and is the best way to ensure that insurance is available, affordable, and fairly priced. AI/ML technologies have been successfully integrated into existing insurer business processes. One of the most transformative uses of AI/ML technologies by insurers is in the underwriting process. Larger data sets and advanced analytical tools present the opportunity for improved pricing models and expanded coverage.[9] This allows insures to provide a more seamless customer experience by creating efficiencies in the sometimes-lengthy underwriting process. AI tools may also allow insurers to identify previously undiscovered risk pools of underserved policyholders who are similarly exposed to a niche (or previously uninsurable) risk. This would allow for more tailored coverage, expanded policies, and/or lower costs for policy holders.

AI/ML enabled pricing models can also be dynamic. Technologies like telematics, which allow insurers to analyze consumer behavior on an ongoing basis via a network of connected devices ("internet of things" or "IoT"), and predictive modeling can alert a policyholder to activities that will, or may, raise coverage cost, which in turn could encourage lower-risk behaviors.[10]

Lastly, AI-enabled applications can help consumers better understand how much their property is worth and propose coverage accordingly. When choosing to purchase a renter's or homeowner's policy, a customer can use an app to take photos of their property and personal articles to determine appropriate coverage amounts.

Claims Processing

AI/ML technologies can improve claims processing and improve overall customer satisfaction. Through integrated and real-time data, an insurer can be immediately notified of a possible triggering event, and more accurate damage assessments can be made. Furthermore, the coverage provider can proactively reach out to a policy holder to begin the claims process.[11] By way of example, if a heavy rainstorm, forest fire, or tornado is reported in the close vicinity of a store, the store owner could receive an automatic communication from their insurer inquiring if the store was impacted and if the owner wishes to file a claim. Similarly, AI can augment image files to eliminate smoke residue—thereby allowing forest fire assessment before it is even safe

[8] McKinsey & Company, Insurance 2030—The impact of AI on the future of Insurance, March 12, 2021, https://www.mckinsey.com/industries/financial-services/our-insights/insurance-2030-the-impact-of-ai-on-the-future-of-insurance; *see also* Deloitte, Risk and compliance implications of AI in the Insurance Industry, 2019, https://www2.deloitte.com/content/dam/Deloitte/de/Documents/risk/article-risk-and-compliance-implications-of-ai.pdf.
[9] *Id.*
[10] *Id.*
[11] National Association of Insurance Commissioners, Artificial Intelligence, NAIC, October 30, 2019, https://content.naic.org/cipr_topics/topic_artificial_intelligence.htm.

to enter the area in question. Such processes have the added benefit of significantly shortening response and recovery time, while improving the overall customer experience.

Another application of AI for improved claims processing is the use of chatbots—an AI software that provides a chat conversation with a customer in lieu of a phone conversation.[12] Automated chat presents the opportunity to vastly improve overall efficiency by serving as a means of triaging claims. This allows insurers to handle claims and improve customer satisfaction by reducing long wait times.

Fraud Detection

Dynamic pricing through analysis of integrated consumer data not only creates a more efficient underwriting process but can also help improve fraud detection. Through various third-party and internal insurer data sources, AI models can analyze the likelihood of fraud indicators in real-time when a claim is filed, which can significantly improve both hard and soft fraud detection.[13]

Consumer Protections

As discussed, there are a wide array of potential uses of AI/ML technologies by insurers that would allow for lower costs and improved customer experiences. While the manner in which the data is collected and analyzed differs from traditional practice, its potential uses do not change. For that reason, in our view, existing legislative and regulatory frameworks that ensure insurers are good stewards of policy holder data can apply to the integration of AI/ML technologies.

To support the efficacy, fairness, and accuracy of utilizing an AI model for detecting claims fraud, guardrails and best practices can be implemented to mitigate potential bias. For example, maintaining human involvement in the design and monitoring of AI models can help to identify and correct potential biased outcomes long after an AI model is developed, tested, and launched. Involving both humans and AI models will provide continuous feedback on the performance of the model and allow insurers to continue to detect and mitigate potential bias.

When receiving consumer data from third parties that track consumer habits (e.g.: wearable IoT devices, budgeting and health apps, or other geolocation technologies), ensuring the third party is also a good steward of customer data and that the consumer is aware of the use and transfer of their data is imperative. To achieve this goal and other important policy goals, the Coalition supports a federal data privacy standard with clear federal preemption language and that will protect consumers through requirements like transparency in privacy notices.

III. Policy Recommendations

The Insurance Coalition makes two policy recommendations: continued support for the existing regulatory framework and supporting a regulatory framework that encourages innovation.

Support of Existing Regulatory Framework

The use of AI in the insurance processes should not in and of itself create a new set of requirements for companies, but rather this capability should be appropriately implemented to

[12] *Id.*
[13] Cem Dilmeganni, 9 AI Insurance Applications/Use Cases in 2021: In-depth guide, AI Multiple, May 7, 2021, https://research.aimultiple.com/ai-insurance/.

meet existing regulatory requirements. Consistent with existing technologies and methodologies, it is important to look through the lens of outcomes rather than process. Further, review of AI systems and processes should follow risk-based analysis. The Insurance Coalition recommends that before federal regulators issue regulations that would apply to ISLHCs, they first consider the adequacy and adaptability of the existing regulatory framework and collaborate with the NAIC and state commissioners and legislatures. Doing this will avoid duplicative or conflicting regulations with which ISLHCs must comply.

Similarly, if an AI/ML regulation is created, it should be harmonized with existing federal laws and regulations that apply to ISLHCs. These laws include, but are not limited to, those governing the use or transfer of consumer data (e.g.: GLBA and HIPAA), as well as state laws. By harmonizing regulations, insurers and other businesses can have as clear of an understanding as possible of their compliance obligations.

Encourage Innovation

A proper balance must be struck that guarantees adequate oversight and establishes strong safeguards protecting consumer data, while still fostering an environment that encourages innovation and integration of new technologies into the business of insurance. As shown by the use cases above, AI has significant potential to benefit consumers. To the extent AI/ML technologies present novel issues that are not adequately addressed by existing regulatory and legislative frameworks, the Coalition urges that any new regulation be narrowly tailored to achieve the desired goal and focused on the use of the technologies, not the technology itself.

IV. Conclusions

Insurers fully embrace our responsibility to create opportunities for more Americans and strive to meet great societal need, including by closing wealth gaps and broadening financial well-being. AI/ML technologies can assist the insurance industry in those efforts by improving underwriting, claims processing, fraud detection, and other day-to-day business activities. The Coalition believes the existing regulatory framework is adequate to address concerns regarding the use of AI and its potential for discrimination. Any new regulations by federal regulators of AI/ML technologies should be considered in this context. Particular appreciation should be given to the state-based regulatory regime of insurers and state regulators' ongoing work in this space, the need to harmonize with existing laws governing use of consumer data and fostering an environment that encourages technological innovation while protecting consumers.

The Insurance Coalition appreciates the opportunity to contribute to this important policy discussion. We look forward to continued engagement as the process unfolds.

Sincerely,

Bridget Hagan
Executive Director, the Insurance Coalition