Date: April 5, 2021

To: All NAIC Members and Interested Parties

From: Andy Beal, NAIC Chief Operating Officer and Chief Legal Officer
Jim Woody, NAIC Chief Financial Officer

Re: Summary of Comments on the Proposed March 2021 Fiscals for the 2021 NAIC Budget

The NAIC released three proposed Fiscal Impact Statements (fiscals) for public comment on March 17, which represent requests for funding within the 2021 budget. The three fiscals are: 1) SERFF Modernization – Mobilization and Pilot Phase, 2) SBS State Implementations 2021, and 3) P/C Rate Model Review Staffing Resources.

Three comment letters were received – one from the National Association of Mutual Insurance Companies (NAMIC), one from the American Property Casualty Insurance Association (APCIA), and one from the Center for Economic Justice (CEJ). Since each letter addresses different issues, the NAIC will respond separately to each.

Comment Letter from NAMIC

The comments in NAMIC’s letter were related to the P/C Rate Model Review Staffing Resources fiscal (NAMIC’s Comment Letter is attached as Attachment I). Each of NAMIC’s comments and the NAIC’s responses are shown below.

- **BUDGETING FOR THE FUTURE** – Does the NAIC see the budget for this project continuing to double annually for the next several years, or will budget allocations be based on state demand?

**NAIC Response:** The fiscal for 2021 focuses on P/C rating models resource needs. The two resources requested will enable the NAIC to meet the states’ demand for these services. However, it is possible membership may at some point decide to expand the reviews to other P/C non-rating models, such as claims, fraud detection, marketing, as well as to other lines of business. Although the current proposal does not include such expansion, should the membership decide to do so, additional resources may be requested in the future. Therefore, budget allocations in this area are expected to be based on state demand.
NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

- **HIRING/CONSULTING APPROACH** – In terms of addressing the increase in technical model review requests, was any consideration given for expanding the current role of the outside consultant instead of hiring new full-time employees?

  **NAIC Response:** Given demand has increased over the past year and is expected to continue to increase as additional states utilize this service, it is less expensive to hire permanent staff than continuing with a consultant. In addition, permanent staff will allow the NAIC to build and retain internal expertise which would not be possible with the consultant model.

- **NAIC STRUCTURE** – As this internal project continues to be developed at the NAIC, it is not exactly clear where these issues and others will be deliberated. What workstreams, committees, working groups, or task forces will discuss implementation of the project? We request further clarification in this area, so that industry might have the ability to comment on any future proposals.

  **NAIC Response:** The initiation of this project was based on the NAIC Executive Committee’s adoption of a recommendation from the Big Data (EX) Working Group. As such there has been committees and working groups involved in the project from the beginning. Going forward we expect the Executive Committee to monitor overall efforts involved with this technical support activity.

- **GOVERNANCE & PROTECTIONS** – What plans are being put in place to assess and assure processes going forward are correct, legal, authorized, and fair?

  **NAIC Response:** A Rate Review Support Services Agreement between the NAIC and the state governs the request for a rate filing model technical review from the NAIC. The agreement itself ensures the process is authorized by the state. The agreement also includes confidentiality requirements and is designed to ensure the process is correct, legal, and fair. The reviews typically see a state insurance department go through two to three rounds of objections, each of which involves company responses, thereby giving companies an opportunity to respond to any concerns. At the end of the process, the state insurance department retains its authority over the review process and the ultimate decision on the rate filing.

  **Comment Letter from APCIA**

  The comments in APCIA’s letter were also related to the P/C Rate Model Review Staffing Resources fiscal (APCIA’s Comment Letter is attached as Attachment II). A summary of APCIA’s comments and the NAIC’s responses are provided in the section below.
APCIA stated in its comment letter it does not object to increased spending to ensure the NAIC is able to conduct technical reviews of P/C rate models in an efficient manner given the importance of timeliness to insurers, regulators, and consumers. Additionally, APCIA offered recommendation in several areas:

- APCIA encourages the NAIC to develop guidelines outlining the limited role of the technical assistance and confidential shared database to ensure the guidance is grounded in state-based regulation and confidentiality is maintained.

**NAIC Response:** Providing technical assistance to state insurance regulators in reviewing P/C rate models is a new function at the NAIC. To help with this undertaking the NAIC retained an experienced actuarial consultant to work with NAIC staff and regulators to develop the necessary guidelines and processes to provide technical reviews of rate models, create and manage a confidential database as well as develop and provide a regulator training program. The NAIC agrees it should be left to state insurance regulators to determine whether rating models comply with state law. The NAIC regularly handles confidential information and has guidelines and procedures in place to ensure confidentiality is maintained.

- APCIA recommends the establishment of a process to notify an insurer when a state seeks the NAIC’s technical assistance and the nature of such assistance, which will allow the insurer to respond in an efficient and appropriate manner.

**NAIC Response:** The NAIC began providing technical assistance to state insurance regulators in reviewing P/C rate models in the 3rd quarter 2020. The NAIC defers to individual state insurance departments as to whether they choose to provide notice to an insurer regarding the NAIC providing technical assistance to the state insurance department in reviewing a rating model. That said the NAIC strives to be efficient in how it conducts these reviews, including re-reviews, and will continue to develop its processes to ensure the review process is conducted in a timely manner and minimizes the impact on the insurance companies.

- APCIA requests the opportunity to comment through a public exposure period on any expansion of reviews beyond P/C rating models and other lines of business as well as the addition of more funding mechanisms.

**NAIC Response:** Expanding the scope of reviews would only occur at the direction of the NAIC membership. Although no expansion is anticipated at this time, if and when a proposed expansion is sought, it would go through a transparent process that includes notice and comment by interested parties. Likewise, if additional funding is requested for this program, whether it be through the NAIC’s annual budget process...
or an interim fiscal, interested parties will have an opportunity to review such proposal and provide comments.

Comment Letter from CEJ

The comments in CEJ’s letter were related to two of the fiscals. The first set of comments were related to the SERFF Modernization – Mobilization and Pilot Phase fiscal and the second set of comments were related to the P/C Rate Model Review Staffing Resources fiscal (CEJ’s Comment Letter is attached as Attachment III).

CEJ’s comments on the SERFF Modernization fiscal primarily relate to the public access functionality offered under SERFF Filing Access (SFA). CEJ has the following questions related to SFA:

• Since there is no mention of SFA in the fiscal, CEJ would like to know if SFA modernization will be part of the SERFF Modernization project.

NAIC Response: Regarding CEJ comments related to the expansion of public access capabilities and SERFF Filing Access, the NAIC expects these requests to be considered as part of the SERFF’s modernization initiative. Requested changes will be documented and evaluated along with the rest of the stakeholders' needs; however, this particular effort will likely not occur as part of the initial Mobilization and Pilot phase outlined in the current fiscal.

• CEJ states that under the current practice, the requester does not know if some or part of SERFF filings have been withheld as SFA does not disclose if any documents have been withheld nor the reason for withholding the document. CEJ requests the NAIC to explain whether the SERFF Modernization initiative will fully address the modernization needs of SFA and what additional functionally is planned.

NAIC Response: The current fiscal is focused on technology choices and interoperability; therefore, the use cases identified for this phase were selected to test the chosen technology stack and do not represent the full scope of work to be completed with the SERFF modernization effort. All existing and proposed functionality will be considered in subsequent project phases.

CEJ also commented on the P/C Rate Model Review Staffing Resources fiscal as highlighted below:

• CEJ noted the fiscal highlighted several recent actions by the NAIC to support state regulators’ review of complex models including a Rate Review Support Services
Agreement, a confidential shared database for sharing information about the models and a rate model technical review process used by NAIC staff. CEJ requested a blank Rate Review Support Services Agreement, the procedures governing access and the use of the confidential shared database, and the procedures/steps in the rate model technical review process.

**NAIC Response:** The NAIC treats the Rate Review Support Services Agreement as a confidential document and therefore the NAIC is not in a position to share the document. The Agreement governs the access and use of the database as well as the procedures and steps in the technical review process. While the NAIC seeks to be transparent to the degree possible, the technical review itself is a confidential process.

- CEJ stated it is in support of the NAIC adding full-time resources to replace the current consultant to assist the states in the review of complex algorithms. However, CEJ believes the fiscal request is inadequate and suggests additional resources such as a full-time data scientist, economist and/or algorithmic auditor should be added to both audit algorithms and to assist the states in the identification of bias in the marketing, underwriting, claim settlement, and antifraud areas.

**NAIC Response:** The NAIC appreciates the views expressed by CEJ and will take those under advisement should the reviews expand at the membership’s request to include other P/C non-rating models, such as claims, fraud detection, marketing, which are not contemplated with the current reviews.

**Concluding Comments**

NAIC leadership, as well as NAIC senior management, appreciates the opportunity to publicly present the proposed fiscals and respond to questions and/or comments raised by interested parties. State insurance regulators, supported by the NAIC, are committed to protecting policyholders as well as ensuring the financial solvency of the insurance industry in a cost-effective and financially prudent manner. The NAIC continuously seeks opportunities to prudentially manage its operating costs while providing world-class support to its members, regulators, interested parties, and insurance customers.
March 31, 2021

Jim Woody
NAIC CFO
VIA jwoody@naic.org
Re: NAIC Fiscal Impact Statement – P/C Rate Model Review Staffing Resources

Dear Mr. Woody:

Please find included herein comments from the National Association of Mutual Insurance Companies concerning the NAIC’s Fiscal Impact Statement on the P/C Rate Model Review Staffing Resources exposed for a two-week comment period.¹

NAMIC would like to begin these comments with a reiteration that our association remains an ardent supporter of the concept of state-based regulation. While we may not always agree with the NAIC on how to effectively achieve specific goals, protecting consumers and ensuring a stable insurance marketplace are principles important to NAMIC members. It is in that vein that we comment about the seemingly rapid growth of the P/C Model Review Staff based on the fiscal note. While there is no intention to impede the NAIC in its mission to assist states as they carry out their regulatory duties consistent with the State Ahead strategic plan, we would like to help ensure that this centralization of the filing review process does not move beyond traditional NAIC staff analysis and into discretionary judgment calls concerning rate approvals – an authority reserved to each of the various states under codified state and federal laws.

We support the transparency that is exhibited in this fiscal note. As NAMIC understands it, the overall discussion to date has centered on the NAIC providing technical assistance to state insurance departments as opposed to the idea that future state or nationwide regulatory review might hinge on decisions made by a single NAIC staff modeler or analyst. The revised approach reflected in the fiscal note would bring an enormous duty to assure the results are correct, legal, and fair. With mention of carrying out several deliverables,² this appears to be

¹ The National Association of Mutual Insurance Companies is the largest property/casualty insurance trade group with a diverse membership of more than 1,400 local, regional, and national member companies, including seven of the top 10 property/casualty insurers in the United States. NAMIC members lead the personal lines sector representing 66 percent of the homeowner’s insurance market and 53 percent of the auto market. Through our advocacy programs we promote public policy solutions that benefit NAMIC member companies and the policyholders they serve and foster greater understanding and recognition of the unique alignment of interests between management and policyholders of mutual companies.

² Items listed include “first-level review of filings against an appropriate technical checklist, identifying overlooked items, and constructing an initial assessment draft report based upon checklist items, as well as providing commentary on relevant company-provided information,
concentrating a large national footprint of rate model reviews – not to mention the proposed expansion into other areas – into one single project at the NAIC.

In light of the nearly doubling of the budget for this project in one year, NAMIC respectfully requests any assurances the NAIC can provide that this framework development process in general will be an open and transparent project with industry consultation and collaboration in its design and that it sufficiently defers to the properly authorized state regulators when a decision is made concerning a particular model. NAMIC understands there may be growing pains as a result of this activity; however, we are hopeful that with strong industry participation many unnecessary burdens or design conflicts of a general nature can be avoided.

As it currently appears, this project scope has grown from an occasional support position for a resource- or expertise-deficient state insurance department to an NAIC-coordinated nationwide project. Based on this and other details in fiscal note, NAMIC is respectfully seeking clarity on the following:

- **BUDGETING FOR FUTURE** - Does the NAIC see the budget for this project continuing to double annually for the next several years, or will budget allocations be based on state demand?

- **HIRING/CONSULTING APPROACH** - In terms of addressing the increase in technical model review requests, was there any consideration given for expanding the current role of the outside consultant instead of hiring two new full-time employees?

- **NAIC STRUCTURE** - As this internal project continues to be developed at NAIC, it is not exactly clear where these issues and others will be deliberated. What workstreams, committees, working groups, or task forces will discuss implementation of the project? We request further clarification in this area, so that industry might have the ability to comment on any future proposals.

- **GOVERNANCE & PROTECTIONS** – What plans are being put in place to assess and assure processes going forward are correct, legal, authorized, and fair?

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drafting of technical reports, review of companies’ responses, participating in team peer reviews of work products and general review modeling techniques to expand knowledge.”
In closing, our intention in commenting is done in support of state-based regulation and to ensure this process achieves the intended goals without creating larger concerns surrounding potential delegations of state authority that might need to be addressed in the future. As always, NAMIC remains open to discussing this issue or others with the NAIC and appreciates this opportunity to comment.

Sincerely,

Jon Bergner
Vice President – Public Policy & Federal Affairs
National Association of Mutual Insurance Companies (NAMIC)
March 31, 2021

Jim Woody, Chief Financial Officer
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106-2197

VIA Electronic Mail: jwoody@naic.org

RE: Fiscal Impact Statement – P/C Rate Model Review Staffing Resources

Dear Mr. Woody:

The American Property Casualty Insurance Association (APCIA)\(^1\) appreciates the opportunity to comment on the National Association of Insurance Commissioners’ (NAIC) Fiscal Impact Statement (Statement) regarding increased staffing resources for property & casualty technical reviews of rate filings (technical review). The Statement indicates that additional staff are necessary to meet increased regulator demand for the NAIC’s technical review resources. A timely review of rate filings is important to industry, regulators and consumers and a backlog of NAIC resources should not have negative consequences for an individual state’s speed to market initiatives. For this reason, APCIA does not object to the increased funding.

The Statement does, however, raise an important opportunity to encourage the NAIC to develop guidelines outlining the limited role of the technical assistance and confidential shared database. For instance, we believe the following are examples of key tenets that should be stressed when regulators utilize these tools:

- **State-based regulation** – The foundation for the development and review of rate filings is grounded in individual state law. It should always remain the purview of individual state regulators to assess the adequacy and approval of a rating models consistent with state law regardless of the technical experts feedback and/or regulator postings in the confidential shared database. APCIA is very concerned that the shared database can “federalize” filing approvals with states deferring to other states and that one states view becomes a national standard. The guidance should consider instituting checks and balances to avoid this potential unintended consequence.

- **Confidentiality** – The confidentiality issue cannot be understated, and we appreciate that only states agreeing to keep the information confidential can have access to the information, technical expert, and shared database. All materials, conversations and observations should remain confidential and only be shared with states that can maintain confidentiality. During a recent Casualty Actuarial and Statistical Task Force (CASTF) call, regulators noted that they would find it helpful to have a list of the items that have been reviewed. APCIA strongly recommends that even these lists should remain confidential.

\(^{1}\) Representing nearly 60 percent of the U.S. property casualty insurance market, the American Property Casualty Insurance Association (APCIA) promotes and protects the viability of private competition for the benefit of consumers and insurers. APCIA represents the broadest cross-section of home, auto, and business insurers of any national trade association. APCIA members represent all sizes, structures, and regions, protecting families, communities, and businesses in the U.S. and across the globe.
confidential, and access restricted to only those states that have signed the confidentiality agreement.

We also offer two additional recommendations for your consideration:

- The NAIC should identify a process for notifying a company when the NAIC’s technical assistance has been sought. This can help the company understand where in the process its filing is and efficiently prepare for any follow-up that may emerge. Notifications should not only identify if the technical expert has engaged on these matters, but also an indication as to “how” and “when” these resources will be engaged. For instance, is the expert being utilized to review samples of rates/filings? This information not only helps the company prepare but also understand and anticipate what additional delays this may cause. Relatedly, the NAIC may consider instituting time limitations on the technical review process, if not already established. Transparency is key to effective and open dialogue between the insurer and regulator during the rate review process, particularly if a third party has influenced a state’s analysis and decision.

- The Statement indicates that “while the focus is on P/C rating models at this time, membership may eventually expand the reviews to other P/C non-rating models (e.g. claims, fraud detection, marketing) and/or to other lines of business.” Should the NAIC expand these tools or identify additional funding mechanisms in the future, APCIA would welcome an exposure period for any such expansion to allow for dialogue and collaboration.

Thank you again for the opportunity to provide feedback and we welcome additional dialogue and are happy to answer any questions that you may have.

Respectfully submitted,

Angela Gleason
Comments from the Center for Economic Justice

To the National Association of Insurance Commissioners

Regarding 2021 Fiscals Released for Public Comment on March 17, 2021

March 31, 2021

The Center for Economic Justice (CEJ) offers the following comments on two fiscals released for public comment on March 17, 2021.

SERFF Modernization – Mobilization and Pilot Phase

During presentations regarding the SERFF Modernization initiative, NAIC staff has made the point that SERFF was originally designed simply to replace paper filings with electronic filings and, in the nearly 20 years since the beginning of SERFF, the desired functionality of SERFF has changed to include, among other things, more tools to assist regulatory review of filings.

The fiscal discusses the needs of regulators and insurers, but fails to mention a key role of SERFF added several years ago – the ability of members of the public to access public filing information and the use of SERFF by states to satisfy public information requests for these public documents.

That public access functionality is called SERFF Filing Access (SFA) and the volume of SFA transactions has eclipsed the number of insurer filing transactions. Compared to about 580,000 filings processed in 2020 through SERFF, there were well over a million SFA transactions.

Despite the critical role of SFA in assisting states to provide public access to public documents and substantial volume of SFA transactions, this functionality is not mentioned in the fiscal. Yet, CEJ and other consumer stakeholders have been pressing NAIC staff to address the critical shortcomings of SFA for both SFA users and states for at least five years.

Since there is no mention of SFA in the fiscal, we write to ask if SFA modernization will be part of SERFF Modernization as part of the fiscal.
We also write to again explain the most critical shortcoming of SFA – the absence of notice or disclosure that some filing documents have been withheld from the public. Most or all states permit insurers to identify some parts of filings as trade secret or some other exception to public disclosure under the states’ laws. While SFA does withhold such documents from public disclosure, SFA does not disclose that any documents in the filing have been withheld, does not identify the withheld documents and does not provide the reason or basis for withholding the document. This failing makes SFA problematic for states seeking to use SERFF to satisfy public information requests for filings because most or all states’ public information laws require the government agency to disclose to the requestor if a requested document has been withheld and, if so, the basis for withholding the document.

In closing, we ask the NAIC to explain whether the SERFF Modernization fiscal will fully address the modernization needs of SFA and what additional functionality is planned.

P/C Rate Model Review Staffing Resources

This fiscal describes recent actions by the NAIC to support state regulators’ review of complex models found in insurers’ rate filings to the states. Among the ongoing activities, the fiscal mentions:

- A Rate Review Support Services Agreement
- A confidential shared database for sharing information about the models
- A rate model technical review process used by NAIC staff

As a preliminary matter, CEJ requests a copy of the

- A blank Rate Review Support Services Agreement;
- The procedures governing access and use of the confidential shared database; and
- The procedures/steps in the rate model technical review process

Regarding the substance of the fiscal, the fiscal seeks funding for an “Actuarial Analyst and a “P/C Rate Modeling Actuary.” We also note that the intent of the fiscal is to obtain NAIC staff to replace the consultant currently used for the tasks identified for the two new NAIC positions.

CEJ has long supported the NAIC developing the resources and capability to assist states in the review of complex algorithms. We support the NAIC replacing work performed by a consultant with qualified NAIC staff.

However, the proposed fiscal is significantly insufficient for at least two reasons.

First, there is a need for more than actuarial expertise. The fiscal should include a full-time position for a data scientist with the skills to audit algorithms, generally, and to assist market regulators in the assessment of racial bias in insurer practices for marketing, underwriting, claim settlement and antifraud as well as pricing. Today’s panel discussion hosted by the NAIC of the film *Coded Bias* made crystal clear that review of complex models requires far more than actuarial expertise.
Second, NAIC resources to assist states in review of big data algorithms must expand beyond review of rate filings and pricing models. Again, as *Coded Bias* and the ensuing discussion made clear, the ability of insurers to micro-target customers in real time means that the types of risk segmentation regulators have long associated with rating is now found in marketing. For example, Arity and Verisk have both recently announced telematics-based marketing and segmentation. From Arity:

Attract the most profitable drivers with telematics-based targeting

Traditionally, insurance marketing has relied on demographic and behavioral data to target potential customers. While useful at a high level, these proxies fall short when it comes to considering customer value and retention. Now, you can reach the most profitable customers from the outset using the nation’s first telematics-based marketing platform. . . .

Arity intelligently layers driving score onto insurer campaign targeting criteria to purchase the ideal audience based on quartiles of driving risk. [The] Scored user receives a targeted offer via awareness and performance channels.

From Verisk

Insurers can harness the power of connected Hyundai vehicles as a new marketing channel to support the profitable growth of their behavior- or mileage-based programs. Discount Alert allows insurers to deploy personalized marketing offers directly to drivers through Hyundai’s online owner portal and contains robust tools to anonymously segment ideal risk targets—ensuring your offers are only sent to qualified leads.

Insurers’ use of complex algorithms and AI for claims settlement and antifraud are also in more urgent need of regulatory oversight than pricing models as these models are even more likely to reflect and perpetuate historic bias and discrimination.

In closing, we urge the NAIC to expand the fiscal to include an additional position or positions for a data scientist, economist and/or algorithmic auditor to assist the NAIC and states in the review of complex models to address the need to review insurers’ models for more than just purely actuarial issues.