August 23, 2022                                                                              REG-2022-00013

# INVITATION TO WORKSHOP EXAMINING
## BIAS AND DISCRIMINATION: INSURANCE INDUSTRY ALGORITHMS, MACHINE LEARNING AND ARTIFICIAL INTELLIGENCE

Insurance Commissioner Ricardo Lara is committed to preventing unfair practices targeting Californians, regardless of income level or ZIP code, and to ensuring consumer protections are upheld under California's laws.  Accordingly, Commissioner Lara will hold a prenotice workshop regarding contemplated amendments to the California Code of Regulations.  You are invited to participate in the prenotice public discussion.  The purpose of these discussions is to provide interested and affected persons an opportunity to present statements or comments regarding contemplated future regulations.

In an effort to maximize the safety and health of the public and our employees, the Department will use a virtual web conferencing format for this workshop.

Please note that under the California Public Records Act (Government Code Section 6250, et seq.), your written and oral comments, and associated contact information (e.g., your address, phone number, e-mail, etc.) become part of the public record and can be released to the public upon request.

## Date, Time and Location

Date:           September 21, 2022

Time:           1:00 p.m. The virtual workshop shall continue until all in attendance wishing to provide comments have commented, or 5:00 p.m., whichever is earlier.

Location:      Link to Register for the Web-based Virtual Format:
               https://us06web.zoom.us/webinar/register/WN_yXz4mPTjQCyOCSOcu1szUg

**Attendance**.  To increase public participation and improve the quality of any regulations that the Commissioner ultimately adopts, interested parties are invited to attend the virtual meeting and offer comment, if they so choose.

The moderated call-in line to be used for the public hearing is accessible to persons with hearing impairment. Persons with sight or hearing impairments are requested to notify one of the contact persons for these discussions (listed below) in order to review available accommodations, if necessary.

Please direct all inquiries regarding these workshops to the contact persons named below.

**Statement of the Problem.**

The increasing prevalence of the insurance industry's use of big data and algorithmic tools to underwrite, rate, process claims, and market to consumers presents a new potential for unfair discrimination in the business of insurance whether it is intentional or not.  As the National Institute of Standards and Technology noted earlier this year:

> While [Artificial Intelligence] has significant potential as a transformative technology, it also poses inherent risks.[1]… [Machine Learning] models tend to exhibit 'unexpectedly poor behavior when deployed in real world domains' without domain-specific constraints supplied by human operators [citations omitted]…Methods for capturing the poor performance, harmful impacts and other results of these models currently are imprecise and non-comprehensive.[2]

California law prohibits discrimination in insurance ratemaking, claims handling practices, accepting insurance applications, and when canceling or nonrenewing insurance policies.

The purpose of this workshop, therefore, is to explore how Artificial Intelligence (AI), Machine Learning (ML) and other algorithmic tools are used by insurance companies in California, and to find common purpose, and ultimately rules to prescribe, the responsible governance and use of those tools in insurance decisions that affect all Californians.

**Regulation Text**.

This workshop will focus on an initial review of the challenges presented by the insurance industry's use of algorithmic tools, such as machine learning tools, artificial intelligence tools, and other technologies designed to examine big data to make judgments about consumers, marketing, underwriting and other decisions or practices relating to insurance transactions.  Although this workshop will not focus on specific regulatory text, participants should be prepared to present specific comments on the specific questions and subject areas identified below as part of these public discussions. Participants are also invited to submit written statements and are encouraged to provide supporting documents and materials as well.

**Public Input regarding Alternatives.**

The Department hereby seeks public, academic and stakeholder expertise regarding alternatives to properly address the risks posed as a result of bias frequently observed in algorithmic tools. Please provide written or oral comments outlining any alternatives that would secure appropriate consumer protections (benefits) to properly govern and oversee the fair and non-discriminatory use of such technologies in California.

Please provide in your comments analysis and supporting information detailing the economic impact on entities that would be subject to or affected by each suggested alternative. Please provide this input regarding alternatives to Jon Phenix, via electronic mail to Jon.Phenix@insurance.ca.gov by September 21, 2022.

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[1] See National Institute of Standards and Technology (NIST) Special Publication 1270: *Towards a Standard for Identifying and Managing Bias in Artificial Intelligence* (March 2022) at p. 1.
[2] *Id*. at pp. 9-10.

**Questions for discussion.**

*Scope of Use:*

- When is it appropriate to use AI, ML, and Algorithms for insurance decisions in California?
    - How are these tools used by insurance companies for marketing strategy?
    - How are these tools used in the claims handling processes?
    - How are these tools used for ratemaking purposes?
    - How are these tools used for underwriting purposes?
    - How are these tools used for any other purpose related to insurance?
- Even if AI, ML, or Algorithmic tools can be shown to have an actuarial correlation to risk of loss, if such tools harm a protected class of persons, should the tools be permitted at all? If so, under what circumstances? How would their usage be considered permissible under California's Insurance Code laws?

*Transparently Testing and Addressing Bias:*

- How do insurance companies and licensees – today – test AI, ML, and Algorithms to prevent bias against protected classes?
- Do insurance companies and licensees access these tools using third-party vendors? If so, how do you independently validate and responsibly govern the application of these tools?
- If an insurance company or other licensee does not test for bias and disclose the results of those tests, should the Commissioner prohibit the licensee from using the tool?

*Necessary Data to Test:*

- For insurance companies and licensees that do not collect information about protected classes to test against bias, do you use an alternative method to test?
- Do you use Bayesian statistical methods, such as the Improved Surname and Geocoding (BISG) method or Bayesian Improved First Name Surname Geocoding (BIFSG) method?
- Do you use other methods to test against bias?

*Accountability:*

- What are insurance companies, as a business practice, doing to ensure compliance with all applicable laws and training of their staffs on the proper application of and full compliance with all laws applicable to insurance?
- How do insurers and licensees provide transparency to Californians by informing consumers of the specific reasons for any adverse underwriting decisions?
- If an insurance company or other licensee uses AI, ML, or other Algorithms in a way that unfairly discriminates against protected classes, aside from immediately discontinuing the use of the tool, what consequences should result?

**This is Not a Formal Public Hearing on Proposed Regulations**.


Please be advised that participation in these prenotice public discussions will be in addition to, and not in substitution for, any participation in any formal rulemaking process that may follow. This invitation to the prenotice public discussions does not constitute a Notice of Proposed Action. Consequently, comments (oral or written) received in connection with these prenotice public discussions will not be included in any record of rulemaking that may follow. Similarly, the Department is not required to respond to comments received in connection with the prenotice public discussions. For this reason, if you wish to have comments included in any rulemaking file that may follow, or if you wish to have the California Department of Insurance respond to your comments as part of the process by which it adopts this regulation, you must present your comments during the public comment period according to the procedures outlined in any Notice of Proposed Action issued in the future. Again, comments submitted in connection with these prenotice public discussions will not be considered in any subsequent rulemaking proceeding unless they are resubmitted after the Notice of Proposed Action is issued. However, the Commissioner will consider public comments received in these prenotice public discussions as he contemplates any additional regulatory changes that may be proposed in a Notice of Proposed Action.

**Contact Persons**.

All substantive questions and concerns regarding the contemplated regulations and/or these public discussions should be directed to Jon Phenix, using the contact information below. Please submit any written comments via electronic mail to Jon.Phenix@insurance.ca.gov by September 21, 2022.


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