



# IDMA's The Regulatory Review

An eBulletin dedicated to providing insurance regulatory information to IDMA members

September 15, 2021

**To:** IDMA Members  
**From:** Aimee Siliato, Vice President of Marketing, IDMA  
**Subject:** *The Regulatory Review* eBulletin – 2021 Edition No. 3

## **Introduction**

*Welcome to another edition of IDMA's Regulatory Review, presented in support of IDMA's commitment to the robust education of the insurance data manager. Information presented here is compiled primarily from discussions of the National Association of Insurance Commissioners (NAIC) and supplemented with other regulatory actions, activities and discussions.*

*It was referred to as “our journey to get back together” in remarks during the NAIC opening session of its hybrid Summer National Meeting referring to the road we are now on as we work and live during the pandemic and beyond. No one knows where that path will take us but valuable lessons have been, and will be, learned along the way-heightened respect for our planet, our communities, impact of technology, need for flexibility, creativity, agility, reliance on Big Data, Artificial Intelligence, Machine Learning and the responsibilities that go along with their use. Learn more from the discussion summaries presented here.*

## **Upcoming IDMA Events**

**2021 IDMA Fall/Winter Conference, October 13<sup>th</sup>-14<sup>th</sup> | Virtual**  
*Agile Analysis and Governing in a Hybrid Environment*

**Program & Registration** @ <https://events.bizzabo.com/IDMAFallWinterConf>

**Group of 3+ Discount at 15%** - Use promo code **IDMA21FW15**

**Sponsorship/Exhibiting Opportunities Available** - Apply [online](#) or contact us at [team@idma.org](mailto:team@idma.org) for details.

**2022 IDMA Conference, May 15<sup>th</sup>-17<sup>th</sup> | Orlando, Florida**  
*Fueling Data Management and Digital Transformation – Embracing Innovative Technologies*

**Call for Session Open through October 31<sup>st</sup>** @ <https://events.bizzabo.com/AnnualConf2022/home>

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**Climate Change Disclosure**

- U.S. Securities and Exchange Commission (SEC) created the Climate and Environmental, Social and Governance (ESG) Task Force to develop initiatives to proactively identify ESG-related misconduct
- Task Force’s initial focus will be to identify any material gaps or misstatements in insurers’ disclosures of climate risks under existing rules
- SEC pursuing new disclosure rules to be issued possibly by October
- NAIC presentation by Transamerica noted responsible insurer portfolio investment decisions relative climate, energy, effect on planet, must be part of the investment decision-making process
- To assist with insurer disclosure of climate, sustainability, embed information in the NAIC Own Risk and Solvency Assessment (ORSA), the internal process undertaken by an insurer or insurance group to assess the adequacy of its risk management, currently in effect for large and medium-size insurers and insurance groups

**Colorado Privacy Act**

- Colorado Privacy Act (CPA) signed by the governor on July 7, 2021, effective July 1, 2023
- Adds to the U.S. privacy landscape with California and Virginia
- Increases protection of consumers’ data, will further expand consumer privacy rights in the U.S.
- Provisions include permitting consumers to submit requests to data controllers to opt out of the processing of personal data for targeting advertising, sale or profiling; confirm if a data controller is processing their personal data; correct inaccuracies

**COVID-19 Business Interruption Claims**

- Multiple cases involving COVID-19 business interruption claims dismissed, due to policy language requiring direct physical loss of, or damage to, the covered property requiring distinct physical alteration of property
- Boardwalk Ventures CA, LLC v. Century-National Insurance Company, et al successfully argued that the “presence of people infected with the virus particles renders physical property in their vicinity unsafe and unusable, resulting in direct physical loss to that property”.
- Key question: Does COVID-19 implicate a direct physical loss or damage?

**Market Conduct Annual Statement**

- Adding data elements about lawsuits for homeowners and private passenger auto Market Conduct Annual Statement (MCAS) lines of business being discussed
- Adding digital claims data elements for homeowners and private passenger auto being discussed
- Subject Matter Expert Group will focus on data element definitions and placement in MCAS

**Ohio Personal Privacy Act**

- Introduced in July 2021
- Follows in footsteps of and generally resembles California, Virginia and Colorado legislative enactments
- Notable deviation: Businesses can utilize an affirmative defense from an enforcement action or lawsuit filed by a consumer if the business creates, maintains and complies with a written privacy program that reasonably conforms to the National Institute of Standards and Technology privacy framework

**Predictive Models**

- NAIC staff available as a resource to regulators to assist in evaluation of rate filings that include the use of predictive models, approval authority remains with regulators

**Privacy Protections**

- Six key consumer rights should be ensured:
  1. The right to opt out of data sharing
  2. The right to opt into data sharing
  3. The right to correct information
  4. The right to delete information
  5. The right of data portability
  6. The right to restrict use of data
- Draft of Privacy Policy Statement posted on NAIC website
- Final report/statement targeted for end of 2021

**Race and Insurance**

- Overall objective-Research level of diversity, equity and inclusion (DE&I) in the industry
- Work in progress for the 5 workstreams that have been established includes:
  1. Analyze DE&I within the industry
    - Evaluate current DE&I projects and metrics
    - Probe gaps
  2. State insurance department and NAIC staff DE&I
    - Survey released August 5-what are states and NAIC best practices, responses due August 27
  3. Property/casualty sector
    - Working with American Academy of Actuaries and Casualty Actuarial Society
  4. Life and annuities sector
    - Workplan being developed
  5. Health sector
    - Collecting demographic data
    - Identify culturally competent providers
    - Data collection best practices document to be developed
- General discussion points/questions being considered:
  - Require regulators to test algorithms for racial bias
  - Cause versus correlation
  - Develop a model law?
  - Credit-score based pricing eliminated?

**Special NAIC Session-Casualty Catastrophe Risk in a Time of Social Inflation**

- Session focused on the rising costs of insurance claims as a result of societal trends and views such as increased litigation, broader contract language interpretation, precedent-setting plaintiff legal decisions
- Asbestos single largest cost to industry in terms of claims payments, industrywide payments estimate-\$100 billion
- Environmental pollution-\$46 billion
- New product and behavioral casualty liability exposures include man-made chemicals and related risks such as air, food, soil, water contamination (PFAS- per- and polyfluoroalkyl substances), opioids and climate liability

**State Ahead**

- NAIC strategic plan continues with focus on moving systems to the cloud and modeling resources for regulators

**Survey on Industry’s Use of Big Data, Artificial Intelligence and Machine Learning**

- Survey to select insurers
- Being conducted under the state insurance department’s examination authority to ensure confidentiality
- Will collect information on what insurers are doing directly as well as their use of third-party vendors
- Final report on findings targeted for December 2021

*Disclaimer*

*The content presented here is not intended to be all-inclusive. Please visit [www.naic.org](http://www.naic.org) and click on Committees for more information or consult your company's regulatory/compliance staff. Any opinions or observations expressed here are strictly those of Ms. Siliato's and do not necessarily represent the opinions or observations of any company, member of IDMA or of IDMA leadership. The independent review of this material by you and/or your company should be considered in any use of this material.*

*Comments and Feedback*

*IDMA welcomes your feedback on this communication. Please feel free to send comments to Farouk Yassine, IDMA Executive Director, at [fyassine@idma.org](mailto:fyassine@idma.org) or [team@idma.org](mailto:team@idma.org)*

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