A close up of a logo

Description automatically generated

**David Leifer**

Vice President & Senior Associate General Counsel

(202) 624-2128 t

davidleifer@acli.com

**Colin Masterson**

Policy Analyst

(202) 624-2463 t

colinmasterson@acli.com

June 30, 2024

The Honorable Nathan Houdek

Commissioner of Insurance, State of Wisconsin

Chair, NAIC Accelerated Underwriting (A) Working Group

The Honorable Grace Arnold

Commissioner of Commerce, State of Minnesota

Vice Chair, NAIC Accelerated Underwriting (A) Working Group

Sent via email to: Jennifer R. Cook, Sr. Health & Life Policy Counsel, NAIC Government Relations

Re: Comments Regarding the June 3, 2024, Draft Regulatory Guidance and Considerations

Dear Mr. Houdek & Ms. Arnold:

On behalf of the American Council of Life Insurers (ACLI), thank you for providing the opportunity to comment on the June 3rd draft Regulatory Guidance and Considerations document developed by the Ad Hoc Drafting Subgroup of the Life Insurance Accelerated Underwriting (A) Working Group. ACLI believes that there is a considerable amount of quality material contained in the draft and we continue to directionally support its content. We have closely followed the activities of the Working Group since its inception, and we applaud the deliberate collection of information along with the open nature of the Working Group’s deliberations.

ACLI would also like to take this opportunity to highlight how important it is for the NAIC to be as consistent as possible in its terminology, definitions, and other items as there are currently multiple workstreams examining related issues involving accelerated underwriting and the use of Artificial Intelligence & Big Data. The increasing use of technology by insurers and producers is understandably of great interest to regulators. We share your commitment to consumer protection and the application of existing legal requirements pertaining to fair trade practices and unfair discrimination. In our view this can be aided by continuing the close coordination with other NAIC committees and working groups that are examining these issues.

We do have several specific comments/recommendations immediately below:

*Section A.5:*

The June 3rd draft would contemplate an insurer providing the consumer with “all information” involved in an adverse underwriting decision. The current legal standard and industry practice is to provide the specific reason for the adverse underwriting decision, and not all underlying information. In addition, some insurers using various 3rd party algorithms may be bound by contract to not disclose information regarding what are considered to be and promoted as “proprietary” algorithms.  We would also observe that this (and several following sections) involve/touch upon privacy requirements, and perhaps it would be sounder to point to those requirements, which understandably may differ across jurisdictions. For example:

Reason(s) for an Adverse Underwriting Decision are provided to the consumer. Information regarding an adverse Underwriting Decision will be provided to the consumer consistent with applicable state insurance privacy law(s).

*Section A.6:*

Similar to the above, in our view this is a matter of privacy law dealt with elsewhere. Moreover, existing laws and regulations applicable to consumer data automatically apply to data employed in accelerated underwriting. We recommend deleting this section, or framing it as a reminder that existing protections apply, as:

The insurer’s existing procedures to protect consumer privacy and consumer data apply equally when accelerated underwriting is utilized.

*Section A.7:*

Insurers must be careful about, and are often unauthorized, to make changes to consumer records. For example, if a consumer believes something in their medical record is incorrect the insurer can point the consumer to where it obtained the record, but it does not have the ability to change the underlying record. Generally, under insurance privacy law, the insurer must notify the consumer as to where it obtained the disputed record. We suggest modifying this section along the following lines:

The insurer shall have a process in place to assist a consumer in contacting the originator of a record that the consumer believes to be incorrect.

Additionally, the Guidance could state: The insurer should have in place a mechanism to correct undisputed mistakes confirmed by records.

*Section A.9:*

The requirements listed are likely overly broad and/or are inapplicable to the business of life insurance. For example, life insurers are typically required to keep application information for the life of the policy (and even somewhat beyond), thus rendering a requirement of deletion illusory. Perhaps more general language, again pointing to applicable privacy law is appropriate:

The insurer has procedures in place to address consumer issues, including notice requirements and use/restrictions on data consistent with applicable insurance privacy and other existing laws.

*Section C.3:*

In existing practice, insurers use authorizations that describe the kinds of information to be gathered and purposes/uses of that information. This would of course be applicable to information used in connection with accelerated underwriting. It is concerning that this section on its face could be interpreted as requiring more detail than is customary or practical. In addition, the language referencing how information is used in an accelerated underwriting program should be made clearer. We would again recommend a more general statement:

Explain how the company’s authorization for life insurance includes information that may be used in an Accelerated Underwriting program.

*Section C.7:*

Very similar to comments above—information handling is and should be the same whether or not accelerated underwriting is involved. And while companies follow data minimization procedures, some information must be retained for legal and regulatory compliance purposes. The way the question current reads there appears to be a presumption that data or information is “destroyed” after the underwriting process. We would recommend instead:

How is external data or information about life applicants is managed consistent with applicable privacy and other, related laws & regulations?

Thank you again for the opportunity to comment on the draft Regulatory Guidance and Considerations document. The Ad Hoc Drafting Subgroup continues to produce sound work, and ACLI looks forward to continuing our practice of providing feedback. As always, please let us know if there is specific information we can provide during the development of this project.

Sincerely,

Shape

Description automatically generated with medium confidenceA signature on a white background

Description automatically generated

David M. Leifer Colin Masterson