Draft: 6/24/24

Accelerated Underwriting (A) Working Group

Virtual Meeting

June 13, 2024

The Accelerated Underwriting (A) Working Group of the Life Insurance and Annuities (A) Committee met June 13, 2024. The following Working Group members participated: Nathan Houdek, Chair, and Lauren Van Buren (WI); Grace Arnold, Vice Chair, represented by Sarah Gillaspey (MN); Jason Lapham (CO); Cynthia Amann (MO); Maggie Reinert and Megan VanAusdall (NE); Daniel Bradford (OH); Brett Bache (RI); and David Hippen (WA).

1. Exposed the Revised AU Guidance Document and Referral

Commissioner Houdek said that the focus of the Working Group meeting is to discuss the June 3 revisions made to the Jan. 25, 2023, draft *Regulatory Guidance and Considerations* document and the Jan. 11, 2023, draft *Market Regulation Handbook* referral. Commissioner Houdek explained that a small drafting group met weekly following the April 3 Working Group call to revise the drafts based on the comments received last year, as well as the *Model Bulletin on the Use of Algorithms, Predictive Models, and Artificial Intelligence Systems by Insurers* (AI Model Bulletin) and the results of the AI/machine learning (ML) survey. Commissioner Houdek said the drafting group included Van Buren, legal counsel in Wisconsin, Gillaspey, and legal counsel in Minnesota, who were largely responsible for the drafts exposed last year. Also participating in the drafting group were Lapham, Nour Benchaaboun (MD), Amann, Ross Hartley (ND), Bradford, Matt Gendron (RI), and Mariel Garcia (RI). NAIC staff supporting the Innovation, Cybersecurity, and Technology (H) Committee and its groups participated, including Dorothy Andrews (NAIC), Miguel Romero (NAIC), and Scott Sobel (NAIC).

Gillaspey reviewed the revisions made to the June 3 draft *Regulatory Guidance and Considerations* document (Attachment Two-A). She explained that the guidance document was structurally reorganized to include a brief introduction before laying out the guidance. For better organization, three headings were added: 1) *Regulatory Considerations*; 2) *Strategies for Review*; and 3) *Requests for Information*. The more comprehensive background information was moved to after the regulatory guidance.

Gillaspey explained that the content of the guidance is largely unchanged from the January draft. She said the specific differences include: 1) in A)1, instead of the phrase “unfair bias,” the draft uses the phrase “unfair discrimination”; 2) in A)8, the phrase “or actions” was added; 3) in B)1, The January draft’s phrasing of “…review a life insurer’s initial submission of policy filings…” was changed to “underwriting programs/guidelines.”; 4) in B)4, the phrase “via a model” was added; 5) in C)5, “based on external data or information?” was added as clarifying language; 6) rephrased the following question in C)8 that asked how often does a company audits to ask how a company validates, tests, and audits; 7) in C)8, adding a reference to “Adverse Outcomes,” which keys into the AI Model Bulletin; and 8) removing a couple of questions that were not feasible in practice, such as questions asking what changed as a result of audits and why and asking for a copy of audit reports. Similar questions were removed from the AI Model Bulletin as burdensome to produce and of questionable importance.

Gillaspey explained that the revised guidance relies on definitions from other NAIC work products footnoted in the June 3 draft. Changes were also made to the structure of the background information. The June 3 draft lays out chronologically the NAIC work product related to the state insurance regulator guidance. Since the January draft, several NAIC projects in this area were completed and have been hyperlinked and included as appendices to the regulatory guidance.

Gillaspey reviewed the revisions to the June 3 draft referral (Appendix 2 to the June 3 draft *Regulatory Guidance and Considerations* document). She said minor revisions were made to the referral. The referral was updated to reference the AI Model Bulletin and specifically list the NAIC models that provide the authority to add guidance on accelerated underwriting (AU) in life insurance to the *Market Regulation Handbook*. The revised referral references the regulatory guidance rather than re-stating the guidance in the referral. Lastly, the revisions to the referral make clear that the Working Group stands ready to assist the Market Conduct Examination Guidelines (D) Working Group in revising the *Market Regulation Handbook*.

Birny Birnbaum (Center for Economic Justice—CEJ) asked how the Working Group envisioned state insurance regulators and insurers using the regulatory guidance. Van Buren said she saw this guidance as a starting point for state insurance regulators to reference in fulfilling their duties to regulate these new technologies. Van Buren said that the guidance is not overly detailed but will provide helpful guidance to all state insurance regulators, even those with limited exposure to these technologies, to be able to review an AU program under the parameters laid out in the regulatory guidance document. Birnbaum said that the NAIC has been working on AU for at least eight years and that it seems like a long time to reach a starting point. Birnbaum asked what “law or guidelines governing the proposed use of data elements” reference in *Strategies for Review,* specifically where it states that a department of insurance (DOI) may “Review a life insurer’s underwriting programs/guidelines to confirm the proper use of data elements.” Van Buren said the specifics will always be a matter of state law. Gillaspey agreed with Van Buren and explained that, additionally, the *Strategies for Review* reference relies on the regulatory factors listed under the previous heading, *Regulatory Considerations*. Gillaspey also said the educational paper developed by the Working Group (Appendix 1 to the June 3 draft *Regulatory Guidance and Considerations* document) contains context that informs the regulatory guidance and considerations.

Birnbaum asked whether the proper use of data elements includes the avoidance of proxy discrimination as set out in the “NAIC Principles on Artificial Intelligence (AI)” (AI Principles). Gillaspey explained that the regulatory guidance references other NAIC work products, all of which make clear that current insurance laws continue to apply to AI and AU, including laws prohibiting unfair discrimination in rating and underwriting practices. Birnbaum asked whether a state with a law prohibiting discrimination in life insurance underwriting on the basis of race should follow the June 3 draft *Regulatory Guidance and Considerations* document review insurers’ use of AU for proxy discrimination on the basis of race. Commissioner Houdek said every state prohibits unfair discrimination, and the June 3 draft of the *Regulatory Guidance and Considerations* document has been drafted to allow states the discretion to review insurers’ use of AU in light of their state laws.

Birnbaum asked whether the referral to the Market Conduct Examination Guidelines (D) Working Group would include developing procedures for testing whether an insurer’s use of AU violates the prohibition on unfair discrimination on the basis of race. Commissioner Houdek said he anticipates working with the Market Conduct Examination Guidelines (D) Working Group to determine what is appropriate. Commissioner Houdek said Birnbaum was welcome to submit additional comments and questions during the comment period. Birnbaum said he has put forth these questions and recommendations in the past and is wondering why the guidance is not more specific.

The Working Group agreed to expose the June 3 draft *Regulatory Guidance and Considerations* document and referral for a public comment period ending June 30. Comments should be sent via email to Jennifer Cook (jcook@naic.org).

Having no further business, the Accelerated Underwriting (A) Working Group adjourned.

SharePoint/NAIC Support Staff Hub/Member Meetings/A Cmte /AUWG/AUWG min 6-13-23 final