# Consumer Representative Comments on the AUW Regulatory Guidance July 11 Draft

July 29, 2024

We submit these comments on AUWG's July 11, 2024, draft regulatory guidance document. Preliminarily, we again stress the urgency of moving from high-level principles and guidelines to recommending and implementing substantive consumer protection requirements. Until that is accomplished – or at least begun – the goals of ensuring fair, transparent, safe, and secure AUW programs (and AI programs generally) remain unfulfilled and insurance consumers largely unprotected. The rest of our comments will be on the changes reflected in the July 11 draft, and we attach our July 2 comments which addressed additional issues.

We appreciate many of the changes made and believe they make this a better guidance document. However, we also believe that several important points should be added.

*Introductory Section.*

- The draft requires programs that are "fair, transparent, safe and secure." We agree, but we suggest you use the more comprehensive language the Working Group referred to on page 7: "… the importance of developing AI systems that are fair and ethical, accountable, compliant with insurance laws and regulations, and safe, secure, and robust."[1] This would also conform the language to the NAIC's Principles of AI, the NAIC's guiding document on regulating Big Data and AI.

*Section A, Regulatory Considerations.*

- Adding "or combination of variables" to point 2 adds an important element, as Brendan Bridgeland discussed at the July 11 public Webex call.

[1] And add "transparent" to clarify that transparency is embedded within these principles.

- Point 5, requiring communications to consumers to be "understandable by the typical consumer," is an important addition, which can be detailed in future model documents. To avoid vague or general descriptions that provide little guidance to the consumer, we suggest adding the requirement that this information must not only be clear, but also (1) sufficiently detailed to enable consumers to review the specific consumer data that was used and (2) to sufficiently evaluate its accuracy.

- The ". . . at time of authorization" addition on point 6 is vague. "Authorization" should be defined or described so consumers and insurers are clear as to what the "time of authorization" specifically refers to.

- Points 7 and 8 (a helpful addition) address important issues. However, simply requiring that "the insurer has a process [or mechanism] in place" to assist consumers is too vague, easily evaded, and does not assist consumers or insurers in determining what is an adequate process. This guidance document should provide more specific descriptions of what a sufficient process would be. In addition, the draft appears to take the position that insurers need only enable communication between consumers and the "originator of a record" when clarifications and corrections are requested. The insurer made the decision to utilize the relevant consumer data or to contract with third-party data providers that do, and as such, they should have the ultimate responsibility for how it is used and how it can be corrected

  Insurers can negotiate with their third-party data providers on, for example, procedures for correction of consumer data that are more specific and helpful. Insurance consumers cannot. Insurers act within a highly regulated environment and have contractual and regulatory duties to insurance consumers, as well as requirements to act in good faith; regulators can evaluate these elements. Consumers have no contractual relationship with the insurer's third-party vendor, and regulatory oversight of data modelers is often minimal or non-existent – a problem in many different industries and sectors. Moreover, insurers should be required to correct errors in their own records even if a record originated with a third party, a mechanism must be

in place to correct errors in any data an insurer maintains after acquiring that data from a third party.

- Point 7's requirement is ambiguous as to what data "records" refers to. It should certainly include valid evidence of a mistake in the consumer's data that is submitted to the insurer or third-party modeler when the error is discovered.

- Point 9. This point's value has been diminished. The draft's deletion of "following requirements . . ." and the vague (and self-evident) requirement that the use of consumer data must comply with state and federal law would mean that insurance regulators have defaulted insurance consumer privacy requirements to other state and federal agencies, at least in this area. The July 11 draft also removes "opting out of data sharing." While deleting this reference is preferable to *only* mentioning opt-out, it would be better to include *both* opt-in and opt-out, as opt-in better protects consumer privacy and data, and would be an important option for insurers and a way to differentiate themselves from competitors. Doing so would not be staking a position on opt-in or opt-out, but here, simply give both options equal treatment.

*Section C, Requests for information*

- The addition of "and document" to Point 3 is useful and should assist regulators when evaluating insurer responses to DOI information requests.

- Point 4 now states "Ask for a copy of all company disclosures provided to applicants regarding the company's Accelerated Underwriting program." To allow regulators to specifically evaluate an insurer's adverse underwriting disclosures we suggest adding "including disclosures about adverse underwriting decisions and information provided to consumers about procedures to follow to protect their consumer data."

- As we stated previously, we strongly support Point 11's recommendation as it reinforces the AI Principles statement on avoiding unintentional proxy discrimination.

Thank you for this opportunity to comment on the July 11 draft. We also appreciate the time and consideration the Working Group has given these issues and the multiple opportunities for stakeholders to participate.

Sincerely,

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