Consumer Representative Comments on the AUW Regulatory Guidance Draft

July 2, 2024

We, the undersigned Consumer Representatives, appreciate this opportunity to submit comments on the AU WG's June 3, 2024 regulatory guidance document and we look forward to participating in the call on Thursday, July 11th. We have three preliminary comments prior to discussing specific provisions. First, we recognize and appreciate the work performed to date by members of the Working Group (and predecessors) which has put in a great amount of time and effort on this issue since 2016.

Second, while we have some specific recommendations and critiques (discussed further below), of the proposed Regulatory Guidance and support its completion, we hope the Guidance is the last step of the 'Aspirational' standards and guidelines on this subject. Accelerated underwriting programs are already in use in the world and impacting consumers. We strongly believe, and encourage, the Working Group to move onto designing and establishing substantive standards to implement the Guidance (and other NAIC position papers) immediately. Mechanisms for testing, disclosure, regulatory review and consumer transparency must be developed and put into place as soon as possible. The NAIC has spent more than four years on high-level principles and guidelines on the use of Big Data and Machine Learning on insurance (including AUW programs) and while we appreciate the time, effort and well-crafted language of the Guidance, we are eager to see the NAIC move beyond principles to actual product and review standards imperative to protect consumers in a brave new world of data collection and usage.

Third, we believe AUW programs should be fair, transparent, safe and secure. The NAIC set out these general requirements in some detail in its August 2020 Principles of Artificial Intelligence, a forward-looking document that we believe put the NAIC at the forefront of AI regulation of financial services in the United States. Unfortunately, almost four years later, these principles remain largely aspirational [unfulfilled], and generally insurance consumers are no better

informed or protected in in this area than in 2020, aside from the states that have moved independently to enact specific protections. NAIC Consumer Representatives have provided written and oral comments multiple times on this continued gap between aspiration and producing regulatory documents that recommend specific consumer protections and set out the responsibilities of insurers, producers, policyholders, and regulators. Consumers and regulators can have reasonable confidence that insurers' use of AI is fair, equitable, transparent and accountable only when regulators establish specific requirements and metrics that can be evaluated.

Specific Suggestions on the Draft Regulatory Guidance

Introduction: On page 1, the introduction framework should be modified to include a fourth category:

- The regulatory guidance is designed to provide a framework for regulators to reference and is divided into three areas of focus: A) regulatory considerations; B) strategies for review; C) benefits and protections on behalf of the consumer/applicant; and D~~C~~) requests for information.

We believe it is important for the Guidance to acknowledge that protection of consumers is one of the vital goals of implementing and monitoring AUW programs.

Section A, Regulatory Considerations:

- 2. External data sources, Algorithms or Predictive Models are based on sound actuarial principles, including a rational explanation why a rating variable is correlated to expected loss or expense, ~~and~~ why that correlation is consistent with the expected direction of the relationship, and how the inclusion of inputs from multiple data sources interacts in generating an expected loss or expense. *(footnotes omitted)*

As AUW programs use multiple different data points or sources, it is important to evaluate outcomes to measure consumer impacts. Two data points that correlate with risk may turn out to be duplicative and produce inconsistent results when applied together instead of singly.

- 5. Reason(s) for an Adverse Underwriting Decision are provided to the consumer - in language understandable by the typical consumer - along with all information upon which the insurer based its Adverse Underwriting Decision. This should include a sufficiently detailed description of what consumer data the insurer used in its determination, and where such data was reported, such that the consumer is able to review and request correction of any errors in their own data. Generic descriptions such as "low credit score," or "preexisting health conditions" do not meet this requirement.

A clear standard for transparency should be established that permits consumers to correct erroneous information that impacts their ability to purchase insurance. Though insurers may attempt to blame data errors on third-parties, their reluctance (as can be seen in ACLI's latest comment letter) to erasing data after underwriting is completed demonstrates that insurers intend to be in the business of becoming data brokers themselves – collecting and saving detailed data on their customers – and perhaps even beyond. So long as insurers rate customers on data elements, customers should have the right to correct clear errors in their records and disclosure of the basis for adverse underwriting decisions must be required. Outside of consumer information that falls within the federal Fair Credit Reporting Act, consumers have no clear rights or procedures to do so now.

- 6. The insurer establishes and follows written procedures to protect the consumer's privacy and the consumer's data and provides a description of these procedures to the consumer at the time of authorization.

AUW programs utilizing customer data to produce underwriting outcomes should never be subject to ad hoc administration. All AUW programs should be detailed in writing.

- 7. The insurer has a mechanism in place to correct mistakes if found in consumer data. This mechanism must include disclosure to the applicant of what consumer information was used, and a reasonable, accessible, and clearly described procedure for applicants to correct inaccurate information, with final responsibility to evaluate and correct errors on the insurer, and not in third party vendors or modelers.

As noted above, as insurers are intent on collecting and maintaining consumer information as data brokers, error correction mechanisms must be clearly established.

- 9. The insurer has procedures in place to address the following requirements pertaining to the consumer: Notice Requirements, Opting-Out of (or Opting In to) Data Sharing, Correcting or Deleting Information, Data Portability, and Restricting the use of Data.

AUW programs should not be restricted to Opt-Out programs, but clearly permit Opt-In programs as well.

Section B, Strategies for Review:

The following new entry should be added to the topic list.

- Confirm a life insurer has a mechanism in place to correct mistakes if found in consumer data – and a mechanism by which the consumer can inform the insurer of a perceived mistake and obtain specific and direct corroboration of the insurer's receipt and action on the notice of mistaken data.

Finally, we wish to note that transparency of the types of data used in AUW programs is vital for consumers. Mitigation has always been an important part of the insurance marketplace – but consumers cannot take steps to lower their risk when they do not know what criteria are being used.

Section C, Requests for Information:

- 11. How does the company address potential unfair discrimination by ensuring that external consumer data's correlation to risk is not outweighed by any correlation to a protected class(es).

Note: we strongly support this recommendation as it reinforces the AI Principles statement on avoiding unintentional proxy discrimination.

Thank you for considering these comments.

Sincerely,

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