![ACLI - Financial Security for Life]

David Leifer
Vice President & Associate General Counsel
(202) 624-2128 t
davidleifer@acli.com

October 20, 2020

Rebecca Rebholz, WI, Chair
October Nickel, ID, Vice Chair
Market Conduct Annual Statement Blanks (D) Working Group
c/o Tressa Smith, Senior Market Analyst
National Association of Insurance Commissioners
Via tesmith@naic.org

RE: Accelerated Underwriting

Dear Mmes. Rebholz & Nickel, and Members of the Working Group:

Thank you for the opportunity provided to The American Council of Life Insurers (ACLI) to comment on the inclusion of certain accelerated underwriting (AUW) information in MCAS. We want to begin with a reiteration of our commitment to engage with regulators in meaningful dialogue concerning the societal issues that may be entwined with the use of artificial intelligence, and that may include applications of accelerated underwriting. ACLI is supportive of the recently adopted NAIC Principles on Artificial Intelligence, and we are active participants in the NAIC workstreams that are looking at the use of big data in life insurance underwriting. ACLI would like to be included in any ongoing discussions or subject matter expert groups created related to including AUW in MCAS.

Current NAIC Work on AUW

As stated above, ACLI supports and is participating in the NAIC's efforts to create guidance surrounding AUW, but is concerned that the Working Group is getting ahead of ongoing work throughout the NAIC establishing important guidance that should inform the Working Group's efforts. There may be regulatory requirements, standards, or other criteria that emerge from the NAIC work that will dovetail with an MCAS data collection. There is not yet even an NAIC-established definition of AUW, so ACLI reiterates that it is, at best, premature for the Working Group to decide which AUW-related data and interrogatories will be helpful in its efforts to determine the possibility of market conduct violations.

ACLI has summarized the important workstreams the NAIC is currently undertaking surrounding AUW in the table below to highlight the ample and complex work that is already underway. ACLI urges the Working Group to consider all of these ongoing discussions and workstreams at the NAIC prior to making any changes to MCAS.

NAIC AUW Work		
NAIC Group	Relevant Charges	Relevant Work Underway
■ Special Committee on Race and Insurance: ■ Workstream 3 ■ Workstream 4 ■ Workstream 5	1. Conduct research and analyze the level of diversity and inclusion within the insurance sector; 2. Engage with a broad group of stakeholders on issues related to race, diversity, and inclusion in, and access to, the insurance sector and insurance products; 3. Examine and determine which current practices or barriers exist in the insurance sector that potentially disadvantage people of color and/or historically underrepresented groups; and 4. Make recommendations to the Executive Committee and membership by year end regarding steps: (a) both insurance regulators and the insurance industry can take to increase diversity and inclusion within the sector; (b) that should be taken to address practices that potentially disadvantage people of color and/or historically underrepresented groups; and (c) to ensure ongoing engagement of the NAIC on these issues through charges to its committees, task forces and working groups.	■ Examining and determining which practices or barriers exist in the insurance sector that potentially disadvantage people of color and/or historically underrepresented groups and make recommendations on actions regarding the following lines of business: ■ Workstream 3: Property and casualty insurance sector ■ Workstream 4: Life insurance/annuities sector ■ Workstream 5: Health insurance sector .
■ Innovation and Technology (EX) Task Force	■ Provide forums, resources and materials for the discussion of innovation and technology developments in the insurance sector, including the collection and use of data by insurers and state insurance regulators—as well as new products, services and distribution platforms—in order to educate state insurance	■ Discussing regulatory relief for COVID-19 and identifying practices that prohibit or limits insurers or producers from implementing or using newer technologies, data, methods or processes, Reviewing proposed

	regulators on how these developments affect consumer protection, privacy, insurer and producer oversight, marketplace dynamics and the state-based insurance regulatory framework.	draft language for revisions to the Unfair Trade Practice Model Act (#880) Section H.4 addressing anti-rebating issues.
■ Artificial Intelligence (EX) Working Group	■ Study the development of artificial intelligence (AI), its use in the insurance sector, and its impact on consumer protection and privacy, marketplace dynamics, and the state-based insurance regulatory framework. The Working Group will develop regulatory guidance, beginning with guiding principles, and make other recommendations to the Innovation and Technology (EX) Task Force as appropriate	■ Developed principles addressing insurers' use of artificial intelligence and the need to avoid proxy discrimination against protected classes
■ Big Data (EX) Working Group	1. Review current regulatory frameworks used to oversee insurers' use of consumer and non-insurance data. If appropriate, recommend modifications to model laws and/or regulations regarding marketing, rating, underwriting and claims, regulation of data vendors and brokers, regulatory reporting requirements, and consumer disclosure requirements. 2. Propose a mechanism to provide resources and allow the states to share resources to facilitate their ability to conduct technical analysis of, and data collection related to, the review of complex models used by insurers for underwriting, rating and claims. Such a mechanism shall respect and in no way limit the states' regulatory authority. 3. Assess data needs and required tools for state insurance regulators to appropriately monitor the marketplace and evaluate underwriting, rating,	■ Discussing the use of data for fraud and claim settlement and regulatory oversight of third-party vendor that may be engaging in activities similar to advisory organizations.

	claims and marketing practices. This assessment shall include gaining a better understanding of currently available data and tools, as well as recommendations for additional data and tools, as appropriate. Based on this assessment, propose a means to collect, house and analyze needed data.	
■ Speed to Market (EX) Working Group	■ The mission of the Speed to Market (EX) Working Group is to 1) serve as the NAIC focal point for modernization of the insurance product filing and review processes; 2) monitor the development and implementation of speed to market efficiencies and the System for Electronic Rate and Form Filing (SERFF); and 3) provide support to the Interstate Insurance Product Regulation Commission (IIPRC) for initiatives that require uniformity and policy changes within the states, where necessary.	■ Providing a forum to gather information from the states and the industry regarding tools, policies and resolutions to assist with common filing issues. Provide oversight in evaluating product filing efficiency issues for state insurance regulators and the industry, particularly with regard to uniformity. In 2020, evaluate the state survey results compiled in 2019 regarding the usefulness of existing tools and potential new tools and propose a plan to make improvements.
■ Accelerated Underwriting (A) Working Group: ■ Ad Hoc Liaison Subgroup ■ Ad Hoc Drafting Subgroup	■ <u>Overall charge</u>: Consider the use of external data and data analytics in accelerated life underwriting, including consideration of the ongoing work of the Life Actuarial (A) Task Force on the issue and, if appropriate, drafting guidance for the states. ■ <u>Ad Hoc NAIC Liaison Subgroup</u>: Focus on making sure the AUWG	■ Developing a work product that provides regulators with guidance/best practices for accelerated life insurance underwriting, considering questions of informed consent, unfair discrimination against protected classes, explainability, scope, data inputs,

	is aware of all other NAIC groups, past and present, ■ including any work products developed or in progress in those groups ■ <u>Ad Hoc Drafting Subgroup</u>: Focus on identifying the issues, synthesizing the information received and make a recommendation to the Working Group about a work product. This drafting subgroup will also propose a process for developing that work product	maintenance and compliance, and existing state and federal laws and regulations. ■ First draft to be completed and exposed by end of Dec. 2020 ■ Final work product to A Committee by 2021 Summer National Meeting
■ Life Actuarial (A) Task Force	■ Report progress on all work to the Life Insurance and Annuities (A) Committee and provide updates to the Financial Condition (E) Committee on matters related to life insurance company solvency. This work includes the following: ■ Provide recommendations for guidance and requirements for accelerated underwriting, as needed.	■ Focusing on the actuarial soundness of new data being used by life insurers and any long-term solvency issues
■ Casualty Actuarial and Statistical (C) Task Force	■ In coordination with the Big Data (EX) Working Group: 1. Draft and propose changes to the Product Filing Review Handbook to include best practices for review of predictive models and analytics filed by insurers to justify rates. 2. Draft and propose state guidance (e.g., information, data) for rate filings that are based on complex predictive models. 3. Facilitate training and the sharing of expertise through predictive analytics webinars (aka "Book Club").	■ Developing white paper of best practices for the review of predictive models and analytics filed by insurers for P&C rating and facilitating training and sharing of expertise among states.
■ Privacy Protections (D) Working Group	■ Reviewing state insurance privacy protections regarding the collection, use and disclosure of information gathered in	■ Beginning a gap analysis discussion of data privacy using the Privacy of Consumer

	connection with insurance transactions, and making recommended changes, as needed, to certain NAIC models, such as the NAIC Insurance Information and Privacy Protection Model Act (#670) and the Privacy of Consumer Financial and Health Information Regulation (#672).	Financial and Health Information Regulation (#672) as a baseline model.
■ Producer Licensing (D) Task Force	■ The mission of the Producer Licensing (D) Task Force is to: 1) develop and implement uniform standards, interpretations and treatment of producer and adjuster licensees and licensing terminology; 2) monitor and respond to developments related to licensing reciprocity; 3) coordinate with industry and consumer groups regarding priorities for licensing reforms; and 4) provide direction based on NAIC membership initiatives to the National Insurance Producer Registry (NIPR) Board of Directors regarding the development and implementation of uniform producer licensing initiatives, with a primary emphasis on encouraging the use of electronic technology.	■ Drafting a white paper on the role of chatbots and artificial intelligence (AI) in the distribution of ■ insurance and the regulatory supervision of these technologies.
■ NAIC/Consumer Liaison Committee	■ The mission of the NAIC/Consumer Liaison Committee is to assist the NAIC in its mission to support state insurance regulation by providing consumer views on insurance regulatory issues.	■ Consumer advocates proposing model law to modernize insurance rate and form regulation that would address algorithmic bias based on data used

Specific Suggestions

If the Working Group is intent on continuing with AUW information at this time, we offer two further suggestions. First, ACLI recommends using the Academy of Actuaries definition of AUW which reads: "a technology solution which is designed to perform all or some of the screening functions traditionally completed by underwriters, and thus seeks to reduce the manpower, time and/or data necessary to underwrite a life insurance application." This definition has the advantage of being

vetted by experts who have worked with and studied AUW. Second, we strongly urge the Working Group to limit the questions to the first two in the CEJ proposal—is a company using AUW and, and if so for which lines of business. This may provide some baseline information without collecting source data, which again will be of little utility for regulators to use in this form.

Thank you again for the ability to participate in this process, and please let us know if we can provide any additional information.

Thank you for your consideration.

Sincerely,

David Leifer
American Council of Life Insurers
Vice President & Associate General Counsel
(202) 624-2128
davidleifer@acli.com

Rikki Pelta
American Council of Life Insurers
Associate Counsel
(202) 624-2355
rikkipelta@acli.com