Comments from the Center for Economic Justice

To the NAIC Accelerated Underwriting Working Group

May 28, 2021

The Center for Economic Justice offers the following comments on the May 17, 2021 draft work product of the Accelerated Underwriting (AUW) Working Group, styled as an "Educational Paper on Accelerated Underwriting in Life Insurance."

General Comments

Our specific comments on the draft are attached and shown as redline edits. The following comments provide context for the specific edits.

The exposure draft is styled as an "Educational Paper." However, it is unclear to whom this education is intended. It is important to know the intended audience for the paper to provide relevant comments. For example, if the paper is targeted at regulators, it is unclear why there is any discussion of the alleged benefits of AUW or inclusion of the explanations insurers' use to market AUW to regulators and the public.

We suggest that for purposes of regulatory review, AUW is simply life insurers' application of big data / AI to life insurance underwriting. This is evident from the fact that the AUW effort at the NAIC, after originating at the Life Actuarial Task Force, moved to the Big Data Working Group before moving to the AUW WG.

More important, as AUW is one of insurers' big data / AI applications, the working group's guidance for AUW – and the organization of the paper – should be aimed at implementing the NAIC's Principles on Artificial Intelligence.

As with any insurer big data / AI application, the insurer's goals include one or more of the following – speed the transaction, improve the customer experience, reach new consumers, improve customer segmentation, lower costs and improve profitability. From the regulator's perspective, the alleged benefits of AUW – or any big data / AI application – are interesting, but not relevant to the consumer protection issues arising from that big data / AI application. A regulator's responsibility is to ensure the AUW practices comply with the law – whether or not the regulator perceives benefits to consumers.

We suggest the focus of the paper should be identifying the consumer protection issues associated with AUW and how regulators can use existing regulatory authority and what new regulatory authority is needed to address these issues. We also suggest that there are clear regulatory guidance and actions needed by regulators to ensure consumer protection for life insurers' use of AUW. These action include:

- Surveying insurers to objectively identify the data used in AUW applications and how AUW is being used;
- Require filing of AUW models for regulatory review, in the same way that predictive models for property and casualty pricing are filed and reviewed;
- Require basic Fair Credit Reporting Act protections for consumers -- meaning that the data used by insurers for AUW are disclosable, disputable and correctable – whether or not the data used are subject to the FCRA;
- Require insurers to test their AUW models for proxy discrimination and disparate impact;
- Require insurers to comply with all the best practices for artificial intelligence, including Fair and Ethical, Accountable, Compliant, Transparent and Secure, Safe and Robust.
- Ensure consumers' digital rights and data protection.

To support these needed actions, we direct the working group to a January 2020 webinar in which one vendor of AUW algorithms to insurers – LexisNexis – and a regulatory attorney / lobbyist for the industry discussed AUW.[1] The discussion makes clear that

- AUW is one flavor of a predictive model used by insurers;
- There is no reason for the current disparate treatment of predictive models used by property casualty insurers and the AUW predictive models used by life insurers; and
- Vendors expect and are ready to comply with regulatory requirements for life insurer predictive models that are similar to those for property casualty insurer predictive models.

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[1] A.M. Best, *How Life Insurers are Using Innovative and Compliant Predictive Models*, http://www.ambest.com/video/Video.aspx?rc=293788

Host: What are the elements of the life predictive model?

LexisNexis: Utilizing fairly minimal information from the carrier – literally name address and date of birth -- and going out and getting a lot of data about that consumer. In our particular case, we concentrate on three specific data sources. Motor vehicle records – so what is your driving history and what does that look like? Public records – so that's things like criminal records, bankruptcies, liens and judgments. And credit data – are you paying your bills on time, do you have folks in collections, things of that nature. And by going out and doing that, by going out and taking that very minimal information that a carrier can provide – name, address and date of birth – and gathering up all those additional data assets that are available in real time from a FCRA perspective on that person, we can very, very rapidly develop a mortality score, which helps us to judge whether a person is a high mortality risk or a low mortality risk.

Host: What does disclosable, disputable and correctable mean?

LexisNexis: That's critically important. One of the big issues to us and to regulators is consumer disclosure. So it's incredibly important not only to build technically sound models . . ., but also to be able to disclose what you utilized to consumers, if they choose to use it. Typically whenever someone is using a model like the one we develop, there's a letter that goes along with it, if you want to know what types of data are used in your model, you can call up this number and ask for our life report and it will actually provide all the individual attributes we have on that particular consumer that they can look at. So that's disclosable. We can take all the attributes we are using and disclose them to the consumers who want to see what data we are using and what it looks like. And consumers can look at that and they can obviously judge whether or not they believe that data is correct. And if they don't believe it's correct, they can dispute that. They have a possibility in place so it's not a secret black box. They can look at the data and they can say this particular data element in not something I believe is correct. I want to dispute that and we can assist them in the dispute process. And if it turns out the data are incorrect, the data can be corrected. So, that only the correct data that exists on them is out there and can be utilized for this or future purposes. So that's what disclosable, disputable and correctable means. We believe that is a critically important part of the process.

Host: How do life insurers compare with their property casualty peers in the use of predictive models?

PS: There's both similarities and differences. There are certainly similarities in terms of core data assets. So, I mentioned we are using MVR driving record, public records like bankruptcies, liens, judgments and credit data. Those are all commonly used on the p

and c side. But there's differences as well. All of the attributes don't exactly track the same way in terms of life and life mortality as they might on auto and auto predictions.

While the core attributes are very similar, some of their implications can be very different because you are looking at a different product.

Host: What specific laws do model users need to observe?   Are they changing?

LexisNexis: On the life side, there are no model laws, right now. I think the NAIC group is now exploring those and we anticipate that at some point model laws will be adopted relative to life predictive models.

Regulatory Attorney: Because they are used in the underwriting process and currently now the companies just file the application form. And so with accelerated underwriting this really adds a separate element to that process.

It is kind of a void right now where the technology has gotten a bit ahead of existing laws.

Host: Are models required to be filed or presented to regulators?

LexisNexis: So, on the property and casualty side, if you are going to use a predictive model for pricing and underwriting, those models have to be filed for review by all the states. Examples of those are credit based insurance score models. And we have at Lexis, we have a lot new innovative models that we are now presenting to those regulators and filing . . . But on the life side, they are not. However, that didn't stop us from saying okay. . . we did take the time to go out on the road with . . . half of the states and meeting with those regulators and showing what we are doing.   We do anticipate at some point that models will have to be filed. . . what's being done on the property casualty side will be applicable to the life side. When we develop our documentation we already have a filing packet for life if state A were to say you have to file tomorrow, we are ready to do that ,   . . .We've been doing that for 20 years now. So, we'll be able to do that right away. We are anticipating that and when it happens, we' be ready.

LexisNexis: Not only did we build these models as if they could be filed if that were required – we did that from day 1 – even though we knew it wasn't a requirement, from day 1, we wanted to make sure we were treating this as if the models would be filed so we would be ready for conversations with regulators . . . Filing models is not necessarily a bad thing . . . One of the things that filing a model provides is you file it with the state and they have officially approved it. It's nice to have that level of clarity.