

Center for Insurance Research

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Accelerated Underwriting (A) Working Group
NAIC Central Office
1100 Walnut Street, Suite 1500
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RE: Comments on Educational Paper on AUW Draft 11-8-21

Dear Members of the Working Group:

I am writing to offer my comments on the exposure draft of the Educational Paper on Accelerated Underwriting in Life Insurance (dated November 8, 2021). I am one of the members of the NAIC consumer liaison program and the Director of the Center for Insurance Research. The Center for Insurance Research (CIR) is a nonprofit, public policy and advocacy organization founded in 1991 that represents consumers on insurance matters nationally.

First, I wish to echo and support the comments submitted by my colleague Birny Birnbaum. Birny's detailed analysis and recommendations thoroughly highlight the numerous consumer issues arising from the use of Accelerated Underwriting (AUW) programs. In particular, I urge the adoption of the definitions suggested by Birny. I will not repeat the points Birny raised, but did wish to offer some of my own editorial suggestions.

Introduction (Draft page No. 2)

- This paper is the output of over a year's work by regulators to ~~understand~~ ~~survey~~ ~~the~~ current ~~state-of-the~~ industry trends and ~~its use~~ ~~develop a high level view~~ of accelerated underwriting.

While I believe the publicly accessible presentations received by the Working Group have provided some useful insight, given the numerosity and complexity of AUW models, I do not believe a comprehensive understanding of

current AUW practices can be obtained without the aid of detailed examination of algorithms and machine learning programs or review by data scientists and other neutral experts. The vast majority of the presentations made to the Working Group were from market participants who have a vested interest in the continuation of current AUW programs and while additional information has no doubt been provided in the “regulator only” Working Group sessions, I do not believe there has been enough data analysis to thoroughly test and develop a comprehensive understanding of existing AUW programs. I think the Educational Paper should be clear about its scope – a broad overview of AUW as a concept and a summary of key elements to AUW programs – but not suggest the paper reflects a comprehensive review of specific, real-world AUW programs currently in use.

- “In order to fairly deliver the benefits of more convenient and cost-effective processes, regulators and insurers should be guided by current law related to fair trade practices and unfair discrimination [and continue to monitor AUW practices as they develop to avoid unfairly discriminatory practices.](#)”

It is not enough to comply with historical standards in the advent of new technologies. As Birny Birnbaum’s submissions have illustrated, existing laws have not always prevented unfair (even if accidental) discrimination. Regulators, industry and consumers should all endeavor to prevent any unfair discrimination, particularly when technological evolution may out-pace the drafting of laws and regulations. It should be assumed that insurers will do their best to comply with existing laws and they should be encouraged think proactively about the impact of using new sources of non-traditional data, not simply be reactive.

- The Working Group believes the charge to specifically address the impact on minority populations is included in these terms, ~~and we have provided examples to illustrate the impact on minority populations.~~

I do not believe the latter clause is required to show the Working Group if following the charge it has been given, and as the draft does not contain any specific examples as of yet, is an unnecessary statement.

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- “Life insurance underwriting is the process of ~~determining eligibility~~ ~~and~~ classifying applicants into risk categories to determine the appropriate rate to charge for transferring the financial risk associated with insuring the applicant.”

I do not believe that “determining eligibility” needs to be included in the statement. The risk classification is what an insurer will use to determine if it will issue a policy to an applicant or not, “eligibility” is not a separate step.

- “Companies presenting to the Working Group stated that the accelerated underwriting process is less cumbersome, costs less than traditional underwriting, improves the underwriting experience for consumers, shortens issue times, and increases policy acceptance rates. [The Working Group has not conducted a data call or analysis to confirm these claims.](#)”

I do not doubt that companies see A UW programs as providing them with numerous benefits, otherwise they would not fund their development. But the paper should make it clear this is perspective of the companies and industry consultants who have a vested interest in the continuation of their A UW programs and that the Working Group has not conducted its own cost/benefit analysis to verify these claims.

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- “Such scrutiny is especially important when behavioral data is utilized. Behavioral data may include gym membership, one’s profession, marital status, family size, grocery shopping habits, wearable technology, and credit attributes. [Not all jurisdictions may allow the use of these behavioral data.](#)”

The paper should not imply the listed types of behavioral data have been approved by regulators in all jurisdictions and it should be clear that individual

states retain the power to make judgments about what is permitted in their marketplaces.

- “To accomplish these objectives, regulators should dialogue with [consumers](#), life insurers and third-party vendors to determine if consumer data is being used in problematic or unfair ways or generating unfair outcomes.

Consumers should not be excluded from discussions on the appropriateness of certain types of external data. Moreover, while I believe the bullet point recommendations included in the Draft are helpful, the list of recommendations needs more emphasis on two points: 1) the importance of ensuring that AUW mechanisms do not – even inadvertently – unfairly discriminate on the basis of prohibited categories such as race; and 2) require transparency of the types of external data used in AUW programs to both regulators and 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.

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This section of the paper defines what “traditional data” sources have been used in underwriting, including:

- “Financial and tax information”

My presumption is that “financial” information is meant to refer to FCRA data such as credit reports or insurance scores. However, as I have noted in prior meetings, under many AUW programs a personal bankruptcy within the last 5-10 years disqualifies a consumer from the accelerated underwriting process.¹ Including both credit or insurance scores and bankruptcy in an AUW program is potentially problematic, as it counts a single risk-factor twice. To date, nobody has been able to explain clearly to me why credit and bankruptcy records should both be used together.

¹ https://content.naic.org/sites/default/files/inline-files/Accelerated_Underwriting-NAIC%20December%202019.pdf

Furthermore, it is unclear to me what “tax information” is considered part of traditional underwriting data. Admittedly, while it has been some years since I applied for a new life insurance policy, I do not recall being asked to submit my federal or state tax income tax filings. I think further clarification is required if “tax information” is to be kept as part of the traditional data list.

- ~~“The relationship of the traditional data elements to the risk is well established and consumers understand how the elements impact their risk classification or premium charged.”~~

Birny identified this sentence as problematic, and I agree. In my long experience as a consumer advocate, I can tell you it simply is not true that most consumers understand “the elements” of their risk classification as defined in the paper. Modern day risk classifications are extremely robust and complex and not something a typical consumer is at all familiar with. In my experience, most consumers understand that being overweight, having a history of medical conditions or smoking will impact their life insurance rates – but not “financial or tax information” or “bankruptcy records, civil litigation.”

- ~~“State statutes and case laws were developed based on the use of traditional data containing consumer protections created under the assumption that this was the type of data collected or reviewed during an underwriting process.”~~

I find this blanket statement overly broad and believe that some citation or source would be required to support such an expansive conclusion. Laws related to life insurance in many states have been in place for decades, and in many cases, certainly before the creation of modern-day prescription record databases. Unless an analysis on the legislative history of life insurance statutes in every state will be included in the paper, I think this sentence should be stricken.

- “FCRA data is already used in property/casualty lines of business in many jurisdictions, but has also been prohibited in other states over concern that such data is unfairly discriminatory or disproportionately impacts lower income consumers.”

While the usage of credit scores and insurance scores are widespread, they are not without controversy and not permitted in all jurisdictions for all lines of business and the paper should reflect this.

- “FCRA data may be used to predict mortality, but there may not be a reasonable explanation for that correlation.”

I do not disagree with this statement, but note it shows that FCRA data is inappropriate for use in AUW programs. As noted on page 4 of the paper “behavioral data may lead to questionable conclusions as correlation may be confused with causation” and given that the recommendations require “valid explanation or rationale for any claimed correlation.” As there is no reasonable correlation with mortality for FCRA data, it should not be used in AUW programs.²

The paper also provides a list of “nontraditional data” used in AUW programs, but a number of these data categories are clearly inappropriate and the paper should not suggest they should be used by insurers:

- “assessor data”

Why is assessor data being used in AUW programs and how is it in anyway appropriate? Real estate value would seem to indicate nothing more than the respective wealth of an applicant – which does not necessarily correlate with personal health. It could easily create bias against low income or minority consumers who lack the resources to invest in real estate, but may still take care of their health. Moreover, it could prove misleading. An individual may have inherited a home, which would not demonstrate a level of “personal responsibility” required to save and invest. In which case it would merely reflect generational wealth, which again would create bias against low income or minority consumers.

² Insurers have insisted for years that credit and insurance scores provide an indicator of “personal responsibility” that reflect the sort of risks an insured might take. Clearly, a “personal responsibility” measure is “behavioral data” and should be subject to the standards for the usage of such data.

- “voter information”

Further information is required about the potential usage of voter information before it could be permitted in an AUW program, as the use of such data is potentially problematic.

- “Marketing and social data, e.g., shopping habits, mortgage amount/lender, occupation and education, and social media, etc.”
- “Professional licenses”

These data categories are concerning for the same reason that “assessors data” is – they appear to reflect income levels and generational wealth rather than “personal responsibility.” Moreover, categories such as “shopping habits” are rife with the potential for misleading conclusions. If a parent buys pizzas for a youth sports team frequently, or a large amount of hot dogs for school picnic or fundraiser, should they be tagged as having an unhealthy lifestyle? Classifying applicants based on their chosen mortgage lender would also raise the prospect of redlining. Should life insurance applicants be punished because only certain types of lenders issue mortgages in their neighborhoods? All of these should be identified as data categories that require further examination before being allowed to put into use in AUW.

- “Voice recognition used to determine smoking status”

As someone with a naturally raspy voice who has never smoked a day in my life, I find this particular data category particularly worrisome. Has the Working Group viewed or analyzed any scientific testing of voice recognition patterns? Like the “marketing and social data” listed above, this is concept is too underbaked to be included in a list of potentially acceptable data factors.

- “Facial recognition”

There should not even be the slightest suggestion that facial recognition software is appropriate to use in AUW programs. The NAIC has held a screening of the film “Coded Bias” which amply demonstrated that facial recognition

programs currently in use discriminate against people of color.³ Even if such discrimination is inadvertent and unintended, the outcome would be detrimental to consumers rather than beneficial.

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- “Form and rate reviewers may:
 - Request that the life insurer provides information about how a predictive model or machine learning algorithm will be used.
 - ~~Consider~~ ~~r~~ ~~Require~~ ~~ing~~ the filing of models used to analyze data.
 - ~~Consider~~ ~~q~~ ~~Question~~ ~~ing~~ the extent to which data elements correlate to applicant risk.
 - Request information about source data regardless of whether the data or score is provided by a third party.
 -

The filing of models and probing the basis for correlation should not merely be “considered” – they should be an essential part of regulatory review.

- “Life insurers have a responsibility to understand the data they are using. To accomplish this, life insurers should conduct post-issue audits and data analysis. For example, analyses such as evaluating claims and lapse rates may be helpful. [These audits and analyses should be available for review by regulators \(pursuant to appropriate confidentiality protections\)](#). Life insurers and third-party vendors should ensure data inputs are accurate and reliable.”

I agree that life insurers should be responsible for understanding the impact of the data they are using and how it impacts consumers. Any audits or analyses should be shared with regulators with appropriate trade secret protections.

³https://content.naic.org/article/news_release_naic_host_screening_and_panel_discussion_focused_big_data_and_artificial_intelligence.htm

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- “Any approach that an insurer ~~could have realistically~~ utilized in the year 2000 or prior.”

This standard is vague and unworkable, as it is unclear what the limits of “realistically utilized in the year 2000” might be. It would take far less interpretation simply to state that systems already in use in the year 2000 or earlier are not addressed by this paper. However, it begs the question – did the Working Group examine what programs and resources were available in the year 2000? If not, the entire sentence should be stricken.

Thank you for the consideration of these comments and I wish to thank the Working Group for the all the hard work done to date.

Sincerely,

/s/

Brendan Bridgeland
Director