



**Comments from the Center for Economic Justice**

**To the NAIC Market Conduct Annual Statement Blanks Working Group**

**Regarding the proposed Digital Claims Settlement Additions for Private Passenger Auto and Homeowners MCASs and Accelerated Underwriting Additions for Life MCAS**

**May 27, 2021**

As the MCAS Banks Working Group considers various proposals for data elements and definitions for new and existing MCAS lines of business, CEJ offers the following comments.

- CEJ urges adoption of the definitions, interrogatories and data elements for Digital Claims for the private passenger auto and homeowners MCAS lines, as recommended by the drafting group.
- CEJ urges adoption of the definitions, interrogatories and data elements for Accelerated Underwriting for the life MCAS line, as recommended by the drafting group. CEJ also asks the working group's consideration of additional explanation for the definition of AUW developed by the SME group – explanation similar in purpose to that included with the definition of digital claims settlement.

**Background**

Back in the Spring of 2020, CEJ responded to the working group's request for suggestions and proposals for amendments to existing MCAS lines of business. Part of our response were the proposals to add data elements for digital claims settlement to private passenger auto and homeowners and accelerated underwriting for life insurance.

Our proposals were motivated by the consumer concerns about and the work being done at the NAIC on big data and artificial intelligence (AI) – specifically, insurers' use of new data sources and algorithms to speed up or replace traditional methods of pricing, claims settlement and antifraud. In the case of digital claims settlement, the new data are from photos taken by the consumer, drones or other aircraft and from vehicle and property-generated devices and analyzed without involvement of a human appraiser to produce a claim settlement.

The industry term for the application of big data and artificial intelligence to auto and home insurance claims settlement is digital claims settlement or virtual claims settlement. It's not referred to as accelerated claims settlement even though, as with any consumer-facing big data AI application, the goals are to speed up the process, improve the customer experience, lower insurers' costs and improve profitability.

We offer this explanation to provide some context for what will be a contentious discussion about the proposed life insurance accelerated underwriting data elements and definitions. Accelerated underwriting is simply life insurers' application of big data and AI to underwriting – to speed up the application process, improve the customer experience, lower costs and sell more products. But, the SME groups' definitions for both digital claims settlement and accelerated underwriting have always been focused on the key consumer protection aspects of any big data / AI application – what are the consumer outcomes resulting from the use of new data sources and new artificial intelligence technology. The rationale CEJ provided with the AUW proposal shows this intent:

Life insurers started utilizing accelerated underwriting a few years ago – the use of non-medical data sources to create algorithms for underwriting and pricing. These data sources have included consumer credit data, social media, facial analytics and more. Some of the data sources used by insurers are not subject to the disclosure and consumer protection provisions of the Fair Credit Reporting Act. While accelerated underwriting holds the promise of faster decision making and broader access, the use of black-box algorithms with little or no regulatory oversight also raises the potential for unfair and unfairly discriminatory treatment of applicants and policyholders. To enable regulators to monitor the effects of accelerated underwriting, we propose the following definition and data elements for MCAS life insurance.

The definition of digital claim settlement – and the additional clarifying information – as well as the definition of AUW are all intended to make clear to insurers what bucket to report what experience in and, by doing so, give regulators reliable data to analyze the consumer outcomes associated with the new data and new technologies.

For digital claims settlement, the extensive explanation and examples accompanying the definitions of digital, hybrid and traditional settlements were developed to provide specific guidance to reporting companies in response to questions raised by industry stakeholders. Similar additional explanation and guidance, shown below, was drafted for AUW, but not included in the SME report.

### **Definition of AUW**

The SME group definition is sound because it focuses on the objective criteria to distinguish AUW from other than AUW. The additional explanation make this clear.

“Accelerated Underwriting” – For purposes of MCAS reporting, accelerated underwriting means applying predictive modeling in the underwriting or pricing of life insurance using (in whole or in part) non-medical data obtained other than consciously provided by the applicant or policyholder.

“Consciously provided” means directly given by the consumer with an awareness by the consumer that they are providing the non-medical information. Awareness means the consumer can identify the information they have provided or are providing. Consciously provided data are non-medical information submitted by the consumer in a written or electronic application or directly and knowingly provided in a video or phone application. Consciously provided does not include facial, voice or other biometric analytics or non-medical information about the consumer obtained through third-parties with or without authorizations granted by the consumer. Consciously provided does not include, for example, consumer reports of non-medical information obtained from consumer reporting agencies, as defined by the Fair Credit Reporting Act (FCRA). Whether or not the third party data is FCRA-compliant is not a determinant of consciously provided.

For purposes of MCAS reporting, family history and genetic information are non-medical data. Consciously provided includes family history or genetic information provided by the consumer in an application, but does not include family history or genetic information obtained from a third-party and used in a predictive model, unless the consumer has provided the insurer with that information. In the case of third party family history or genetic information data only, consciously provided includes explicit authorization by the consumer for the insurer to obtain the data from a third party provider.

Consciously provided should be understood in connection with the other determinants of accelerated underwriting – non-medical information used in a predictive model as opposed to use in a stand-alone rule.

For purposes of MCAS reporting, “applying predictive modeling” does not include using insurance claims or motor vehicle violation data in a stand-alone underwriting rule such as declining coverage for a driving under the influence conviction. Applying predictive modeling does not include use of medical data only in a predictive algorithm.

Examples of the types and uses of data that determine whether the transaction should be reported in the AUW category include facial, voice and other biometric analytics, social media, consumer-generated data from wearable devices or other internet-connected devices and credit-based mortality scores.

AUW does not include, for example, criminal history, consumer credit or motor vehicle report data if those data are used in stand-alone rules, such as declining coverage if there is a prior conviction of insurance fraud, a recent bankruptcy or multiple speeding violations. AUW also does not include simply automating analysis of traditional, medical information.

Regulators recognize that insurers' approach to AUW runs along a continuum from no AUW (no use of new, non-medical data sources) to state-of-the-art AUW (extensive use of new data sources in complex, multi-variable algorithms). If you are not certain about whether your uses of non-medical data for underwriting should be reported as AUW, please contact NAIC MCAS experts for guidance at [insert e-mail].

How to identify AUW Transactions:

AUW must meet three criteria:

- At least some non-medical data; and
- At least some of the non-medical data not consciously provided by the consumer; and
- These data used in a predictive model

Decision Tree to Determine Whether Transaction is Reported as AUW:

1. Medical or Non-Medical Data? If Medical Data only, not AUW (Note, for purposes of MCAS reporting, family history and genetic test results obtained from a third-party are not medical data)
2. Consciously Provided by Consumer? If YES for all non-medical data, not AUW
3. These non-medical, not consciously-provided data are used in a predictive model algorithm (as opposed to stand-alone rule)? If NO, not AUW

“Other Than Accelerated Underwriting” means any underwriting experience not included in the accelerated underwriting category.

**Nevada, ACLI and AUW WG Definitions Not Suited to Purpose of MCAS Reporting**

CEJ has objected to the definition offered by ACLI because it would exclude virtually all AUW. For example, the ACLI definition excludes from the AUW bucket any underwriting that relies upon data “authorized by the proposed insured.” For those of you unfamiliar with the Fair Credit Reporting Act, a company using any data subject to the FCRA must get consent from the consumer to access the consumer's data. Companies typically do this by generic references to “consumer reports,” which could be a credit report, a criminal history report, a claims history report, a rental history report or many, many more. So, a consumer who gives consent to an insurer accessing “consumer reports” is not consciously authorizing or providing specific information.

The proposed Nevada definition, as well as the draft AUW WG definition are not suitable for the purpose of MCAS reporting. These definitions seek to explain AUW from the perspective of insurers marketing their practices to regulators and the public as something new the life insurance industry has invented – “Accelerated underwriting is used to replace traditional underwriting or to determine if traditional underwriting is necessary.” For purposes of MCAS reporting, “why” insurers use AUW is not relevant – in the same way that why insurers use virtual claims settlement is not relevant for guiding insurers to report experience in the correct buckets. We know why insurers use big data and AI – it’s not needed or helpful in a MCAS definition.

The fact that life insurers can now access medical information about an applicant faster than they could have in the past doesn’t materially distinguish AUW from traditional underwriting – any more than using a third party data set to get a consumer’s auto claim history instead of from the consumer themselves distinguishes modern personal auto insurance underwriting from traditional auto insurance underwriting. Speeding up the analysis of the same data used in traditional underwriting is not a useful or relevant distinguishing characteristic of AUW for purposes of MCAS reporting.

So, when Nevada comments, “Underwriting can be accelerated using (among others) information an insurer gathers from the applicant,” Nevada focuses on the speed of the underwriting process – interesting, but not relevant for purposes of an examining a big data / AI application that relies on new types and sources of non-medical personal consumer information.