Comments of the Center for Economic Justice  
To the NAIC Accelerated Underwriting Working Group  
February 15, 2022

CEJ appreciates the efforts of the working group, but we are troubled by the working group’s process and disappointed in the work product to date.

Transparency in the Working Group’s Decision-Making

While the working group has solicited several rounds of comments, the working group members have not discussed any of the comments in public session or explained any decisions to accept or reject proposed edits and additions.

The lack of transparency in the working group’s decision-making contrasts sharply with the typical NAIC process in developing committee and working group work products. In recent years, for example, the Innovation and Technology Task Force reviewed and discussed stakeholder comments and explained decisions in developing the Principles for Artificial Intelligence and the revisions to the Unfair Trade Practices Act. The Casualty Actuarial Task Force provided detailed responses to all comments received on the white paper for review of predictive models. The Pet Insurance Working Group reviewed and discussed all stakeholder comments in public sessions.

This lack of transparency into the working group’s decision-making makes it difficult for stakeholders to provide comments on new drafts. We don’t know whether to repeat prior comments or how to address the revised version because we don’t know why prior comments were accepted or rejected.

We ask the working group to review individual stakeholder comments at the next public meeting or meetings and allow stakeholders to both interact with regulators and understand the working group’s decisions. Failing that, we ask the working group to respond in writing to stakeholder comments to explain the working group’s decision-making.
Work Product

The NAIC has been examining AUW for six years – at LATF, at the Big Data Working Group, at the Life (A) Committee and at the AUW working group. We are disappointed that, after six years of study, the current draft shows no progress from 2016. The current draft of the white paper not only could have be written five or six years ago, it was effectively written five or six years ago. All of the substance in the current draft can be found in comments and presentations by Mary Bahna Nolan¹ and the Center for Economic Justice. All of the key information describing AUW and the consumer protection issues regarding insurers’ use of AUW presented in the draft white paper are found in documents from five or six years ago.

The analysis in the current draft is superficial and the recommendations are banal. After six years of study – and additional NAIC activity on big data and AI – consider the following from the white paper:

“Regulators and insurers should continue to monitor accelerated underwriting practices as they develop to avoid unfairly discriminatory practices.”

This totally generic statement applies to every aspect of the insurance life cycle – “accelerated underwriting” can be replaced with any marketing, pricing, claim settlement or antifraud practice and it is accurate. It would be a sad commentary on state insurance regulation if regulators needed to reminded of or educated to this responsibility.

Existing Regulatory Authorities are Clearly Insufficient

The basic premise that seems to guide the white paper is concerning. The paper seems to state that existing authorities are sufficient for regulators to ensure AUW is fair and transparent. The paper directs insurers to comply with existing law.

“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.”

¹ See Bahna-Nolan’s 2016 and 2018 presentations, listed in the documents tab on the working group’s web page and CEJ’s January 2017 and June 2018 presentations to the Federal Advisory Committee on Insurance and the NAIC Insurance Summit, respectively.
“Consistent with the Artificial Intelligence Principles approved by the NAIC in 2020, the use of accelerated underwriting in life insurance should be fair and transparent to regulators, consumers, and policymakers. Companies must operate in compliance with applicable laws, and the process and data companies use need to be secure. 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.”

The white paper then lists a set of generic actions that insurers and regulators should take but offers no guidance on how these actions should be taken or what authority regulators have to compel such action by insurers. Consider the following “should” statements:

“Insurers and other parties involved in accelerated underwriting in life insurance should:”

“Take steps to ensure data inputs are transparent, accurate, reliable, and the data itself does not have any unfair bias.”

What exactly should insurers do to accomplish this? What is meant by unfair bias – is it proxy discrimination, disparate impact or something else? How should regulators ensure that insurers take these actions? It’s clear there is a need to update regulatory authorities to require filing of AUW models prior to use for regulatory review. Why does the white paper not have such a recommendation? The absence of such a recommendation in the white paper is particularly puzzling since, as we’ve documented in prior comments, vendors providing AUW models to life insurers are not just willing to file their models with regulators, but welcome the opportunity to do so. What is meant by transparent? Does it mean transparent to consumers? To regulators? To rating agencies? It’s clear there is a need to update regulatory authorities to define and require transparency. Why does the white paper not have such a recommendation?

“Ensure that the use of external data sources, algorithms or predictive models are based on sound actuarial principles with a valid explanation or rationale for any claimed correlation or causal connection.”

As with the prior point, the white paper offers no guidance on how regulators should ensure these outcomes. The paper seems to suggest that regulatory review will take place in a market conduct examination – as opposed to an up-front review of AUW models filed prior to use. Relying on market conduct examinations instead of requiring filing of AUW models prior to use with regulatory review of the models prior to use makes no sense. At best, a market conduct examination will discover issues years after consumers have been harmed – and for some consumers the harm cannot be remediated.
One of the defining characteristics of big data and AI models, like AUW, is that an error or bias in the model impacts thousands of consumers almost instantly. Given the potential for immediate and widespread impact, up-front review of models as opposed to reliance on market conduct examinations is clearly necessary. Why has the working group not recommended updating statutory authorities to require filing of the AUW models prior to use, consistent with regulatory review methods set out in the CASTF white paper and enhanced by analysis for racial bias?

We note an addition in the most recent draft:

“Life insurers and third-party vendors should ensure that the external data sources, algorithms, or predictive models are developed with sufficient internal controls and oversight and based on sound actuarial principles with a valid explanation or rationale for any claimed correlation and causal connection.”

How is this addition different from the bullet about transparent, accurate, reliable and without unfair bias or the bullet about based on sound actuarial principles and valid explanation? Is this addition intended to operationalize the earlier bullet? If so, why not simply reference the CASTF white paper on regulatory review of predictive models? How will regulators ensure the outcomes set out in this addition in the new draft absent some routine regulatory filing requirement of AUW models?

“Ensure that the predictive models or machine learning algorithm within accelerated underwriting has an intended outcome and that outcome is being achieved.”

As with other bullets in this section, this is an excellent principle. But how should regulators and insurers implement the principle? Beyond the needed new statutory authorities (or guidance if such statutory authority exists) for up-front filing of AUW models and regulatory review, the only way for regulators to determine if the AUW model’s actual outcomes are the intended outcomes presented to regulators is to collect on a timely and routine basis data of actual consumer outcomes. Why has the working group not recommended improvements in regulatory data collection to enable regulators to ensure that actual AUW outcomes are actually the outcomes insurers present to regulators?

We note the new draft contains the following addition:

“Life insurers and third-party vendors have a responsibility to understand the data they are using. To accomplish this, life insurers should conduct post-issue audits and data analysis and make these audits and analysis available to regulators upon request. For example, analyses such as evaluating claims and lapse rates may be helpful. Life insurers and third-party vendors should ensure data inputs are accurate and reliable.”
How is this addition different from the bullets about models achieving intended outcomes? What types of analyses of claims and lapse rates are contemplated? How does a post-issue audit and data analysis relate to life insurers understanding the data they are using? Post-issue audits are intended to ensure actual outcomes match intended outcomes. Similarly, we would expect that developers of AUW models would take steps during the development process – not wait until a post-issue audit – to determine if data inputs are accurate and reliable.

A post-issue audit finding a disparity between intended and actual outcomes may be the result of flawed model specification as opposed to inaccurate or unreliable data inputs – and, consequently, is not the appropriate tool to determine whether data inputs are accurate and reliable.

“Ensure that the predictive models or machine learning algorithm achieve an outcome that is not unfairly discriminatory.”

The first bullet in this section states that insurers should ensure the AUW models have no “unfair bias.” What is the difference intended by regulators between preventing “unfair bias” in the first bullet and preventing “unfair discrimination” in this bullet? Further, how should insurers and regulators implement this principle? Absent new regulatory guidance, how can regulators know that there is a common understanding among insurers and regulators about what constitutes unfair discrimination in the era of big data and AI?

“Be able to provide the reason(s) for an adverse underwriting decision to the consumer and all information upon which the insurer based its adverse underwriting decision.”

Again, we find an excellent principle with no implementation guidance to insurers or regulators. Further, if the insurer is not utilizing data subject to the FCRA – such as biometric or social media data – what statutory requirement is there for an insurer using AUW to disclose an adverse action based on these non-FCRA data? Why has the working group not recommended development of new statutory authority to require an adverse action notice – as well as related consumer protections like access to the data used, ability to correct and ability for reconsideration with corrected data – for adverse outcomes resulting from the use of non-FCRA data?

“Produce information upon request as part of regular rate and policy reviews or market conduct examinations.”

We find this principle misleading since there are no “regular rate … reviews” for life insurance. As discussed above, why is the working group suggesting market conduct examinations as the relevant regulatory tool instead of the clearly-needed updated regulatory authority to require filing of AUW models prior to use?
We also find it puzzling why, since regulators clearly have authority to request information from insurers about virtually any aspect of their operations, the white paper needs to state that insurers should provide information to regulators upon request? If there is concern about regulators’ access to information from insurers about their AUW models and outcomes, why has the working group not recommended updating statutory authorities to specifically address this concern?

Finally, this principle suggests that regulators will request information, but is vague on when or why. As noted above, there is a need for updated regulatory authorities to require filing of models prior to use and collection of granular consumer outcome data to evaluate the impact of the models on different groups of consumers.

**Discussion of Different Types of Data**

We previously discussed the problems with the data type taxonomy used in the white paper in our December 3, 2021 comments. But, we have no idea why the working group disagrees with those comments or otherwise chose not to accept the comments. As mentioned above, we ask the working group to explain its decision-making.

**Unfair Discrimination and Racial Bias**

The new draft notes the following:

“(T)he 2021 charges of the Special Committee on Race and Insurance direct the working group to include an assessment of and recommendations, as necessary, regarding the impact of accelerated underwriting on minority populations.”

“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. Regulators and insurers should continue to monitor accelerated underwriting practices as they develop to avoid unfairly discriminatory practices. Much of the discussion in this paper is framed in these general terms. The Working Group believes the charge to specifically address the impact on minority populations is included in these terms. Future work products of the Working Group may address the charge from the Special Committee on Race and Insurance in more detail.”

We find these passages confusing. The charge to the working group seems straightforward – assess and recommend as necessary regarding the impact of AUW on minority populations. But, the next paragraph states the white paper is framed in these general (unfair discrimination) terms and the new charge to the working group is included in these terms!
We found no assessment of the impact of AUW on communities of color in the paper. We ask the working group to explain how the new charge to assess such impact is covered by the white paper. Generic statements about insurers avoiding unfair discrimination do not address this new charge. We are also puzzled by the statement that future working group efforts may address the new charge instead of will address the new charge.

We stand ready to assist the working group with implementation of the new charge.