Supplemental Comments of the Center for Economic Justice

To the NAIC Accelerated Underwriting Working Group

February 15, 2022

CEJ offers additional comments to the working group in response to the February 11, 2022 comments submitted by ACLI.

Definition

ACLI asks the working group to reverse the improved definition of AUW in the January 25, 2022 draft and replace it with meaningless language. First, we strongly support the revised definition. Second, the ACLI proposal is not a definition. Instead of answering the question, “what is AUW?” the ACLI language answers the question, “what is the purpose of AUW?” ACLI complains, paradoxically, that the revised language is “overly broad,” even though the ACLI-proposed language is so generic – and broad – as to be meaningless. Further, for purposes of the paper – to educate regulators and stakeholders about AUW and to provide the basis for any recommendations to insurers and regulators regarding the use of AUW – the proposed ACLI language is useless. It fails to identify the key distinguishing factors between traditional and accelerated underwriting and, consequently, cannot serve any purpose other than as a marketing tool by industry to obfuscate the need for stronger regulatory oversight of and consumer protections for AUW.

Machine Learning

While ACLI is correct to point out the problem with the description of machine learning on page 2 of the draft, the explanation offered by ACLI is misleading. Machine learning is a subset of artificial intelligence and predictive modeling. The key feature of machine learning is that the algorithm changes on its own – without human intervention – as it processes more information. This distinction – and recognition of machine learning as separate from, say, human-designed predictive models – is relevant for purposes of transparency and explainability of the model and its outcomes. The following link provides a useful explanation of the difference between AI and machine learning: https://www.analyticsinsight.net/the-difference-between-artificial-intelligence-and-machine-learning/
Considerations for Use of Non-Traditional Data

ACL is correct to highlight the additional language in the first bullet of this section. The first bullet, now revised, states:

*Non-traditional data may be used to predict mortality, but the actual or reasonably anticipated experience may not correlate to risk of insurance loss.*

This bullet is problematic – or at least incomplete – for several reasons. First, the use of any type of data for underwriting requires the data or algorithm to accurately predict the costs of the transfer of risk, not just claims (“risk of insurance loss”). Second, if data can be used to replace medical exams and fluid testing and thereby reduce costs, the cost of the transfer of risk has been reduced. Third, if data are used to predict mortality, why would an insurer use the data if it did not correlate to insurance loss?

As we noted in prior comments, the use of bullets points in the white paper is problematic as each of the bullets generally require explanation and amplification.

The second bullet of this section seems to be missing some key words:

*As additional rating factors are introduced via insurance scores or with specific data elements, across and between demographic groups may be introduced or amplified.*

What is being introduced or amplified between demographic groups?

The third bullet seems to incorrectly equate the consumer protections for traditional data and FCRA data.

*Non-traditional data may not have the same consumer protections as FCRA and traditional data.*

The consumer protections found for FCRA-compliant data are not the same as found for traditional data. We are not aware of any requirements, for example, for adverse action notices associated with adverse actions resulting from traditional data.

**FCRA Data**

The consumer protections under the FCRA include disclosure of adverse actions. Adverse actions are broader than simply denying coverage.