

## **LIFE INSURANCE AND ANNUITIES (A) COMMITTEE**

Life Insurance and Annuities (A) Committee Aug. 15, 2024, Minutes

Life Insurance and Annuities (A) Committee July 15, 2024, Minutes (Attachment One)

Accelerated Underwriting (A) Working Group Aug. 6, 2024, Minutes (Attachment Two)

Accelerated Underwriting (A) Working Group July 11, 2024, Minutes (Attachment Two-A)

Accelerated Underwriting (A) Working Group June 13, 2024, Minutes (Attachment Two-A-1)

Accelerated Underwriting (A) Working Group April 3, 2024, Minutes (Attachment Two-A-2)

Accelerated Underwriting (A) Working Group Regulatory Guidance Document Adopted Aug. 14, 2024  
(Attachment Three)

Accelerated Underwriting (A) Working Group Referral to Market Conduct Examination Guidelines (D) Working  
Group Adopted Aug. 14, 2024 (Attachment Four)

## Draft Pending Adoption

Draft: 8/21/24

Life Insurance and Annuities (A) Committee  
Chicago, Illinois  
August 15, 2024

The Life Insurance and Annuities (A) Committee met in Chicago, IL, Aug. 15, 2024. The following Committee members participated: Judith L. French, Chair (OH); Doug Ommen, Co-Vice Chair (IA); Carter Lawrence, Co-Vice Chair (TN); Mark Fowler (AL); Barbara D. Richardson (AZ); Karima M. Woods represented by Stephen Flick (DC); Justin Zimmerman (NJ); Adrienne A. Harris represented by Bill Carmello (NY); Elizabeth Kelleher Dwyer represented by Matt Gendron (RI); Scott A. White represented by Craig Chupp (VA); and Nathan Houdek (WI). Also participating were: Nour Benchaaboun (MD); Fred Andersen (MN); Eric Dunning (NE); Michael Humphreys (PA); and Rachel Hemphill (TX).

### 1. Adopted its July 15 Minutes

Director French said the Committee met July 15 and took the following action: 1) adopted its 2022 Spring National Meeting minutes; and 2) adopted the 2025 revisions to the *Valuation Manual*.

Commissioner Ommen made a motion, seconded by Commissioner Lawrence, to adopt the Committee's July 15 minutes (Attachment One). The motion passed unanimously.

### 2. Heard a Federal Update

Taylor Walker (NAIC) gave an update on the U.S. Department of Labor's (DOL's) proposed Retirement Security Rule, also known as the fiduciary rule, and amendments to the prohibited transaction exemptions (PTEs), which exempt fiduciaries from what would otherwise be prohibited conflicts. Walker reminded the Committee that the rule was issued in November 2023 with a 60-day public comment period. However, as many noted at the time, the comment period really amounted to only 30+ business days with offices closed during the holidays. After a brief review by the Office of Management and Budget (OMB), the final version of the fiduciary rule was published in the Federal Register on April 25, 2024. The DOL made some slight changes to the final version of the fiduciary rule, but the most significant updates, the ones that will impact industry most, remain intact.

Walker explained that the fiduciary rule: 1) expands the definition of an investment advice fiduciary. Fiduciary status applies to nearly all financial professionals who provide retirement guidance, including life insurers who sell annuity products; 2) the new fiduciary definition eliminates the requirement that advice be given on a "regular basis." Now, one-time advice, including rollover recommendations, is considered fiduciary advice; and 3) the fiduciary rule adds additional restrictions and requirements to the PTEs.

Walker explained that most of the fiduciary rule was set to take effect on Sep. 23, 2024. But last month, two federal district courts in Texas, in two separate cases, stayed the rule. This means that industry does not have to comply with the fiduciary rule until the lawsuits are resolved. The first suit was filed by the Federation of Americans for Consumer Choice (FACC), along with several independent insurance agents. The second was brought by nine insurance trade associations, including the American Council of Life Insurers (ACLI), National Association of Insurance and Financial Advisors (NAIFA), Insured Retirement Institute (IRI), and National Association for Fixed Annuities (NAFA). In both court cases, the judges noted that the fiduciary rule shares many of the same legal defects as the Obama-era 2016 fiduciary rule and exceeds the DOL's statutory authority. The DOL is expected to appeal to the conservative Fifth Circuit, which has been hostile to past Biden administration policies.

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### 3. Adopted the Report of Life Actuarial (A) Task Force

Hemphill said the Life Actuarial (A) Task Force met Aug. 11–12 at the Summer National Meeting. Hemphill said the Valuation Manual (VM)-22 (A) Subgroup continues to develop principle-based reserving (PBR) requirements for non-variable annuities and is currently conducting a field test that will run through September. The planned initial effective date is Jan. 1, 2026, with a three-year implementation period that ends on Jan. 1, 2029, after which PBR will become mandatory for non-variable annuity contracts on a prospective basis.

Hemphill said that for indexed universal life policies (IUL), Task Force members have reviewed company illustrations to assess compliance with current Actuarial Guideline *XLIX-A—The Application of the Life Illustrations Model Regulation to Policies With Index-Based Interest Sold on or After December 14, 2020* (AG 49-A) requirements and identify any concerns. Members found that the latest revisions to 49-A appeared initially effective in addressing maximum illustrated rate company outliers. However, Task Force members were surprised to find the inclusion of hypothetical returns or historical averages displayed in the illustrations alongside the maximum illustrated rates. As a next step, state insurance regulators will be following up with companies to better understand how companies see this practice as fitting within the current requirements.

Hemphill reported that for the generator of economic scenarios (GOES), progress continues with the Task Force having received a presentation on model office results. The Task Force is also hearing company presentations in regulator-only sessions on their individual results from the second economic scenario generator field test. So far, companies have noted tremendous improvement in the scenarios and generator since the first field test, but they have also noted additional tweaks that they believe would improve the generator and resulting scenarios. Companies also have noted that their results are directionally consistent with those from the model office, indicating it is an effective tool for obtaining a general understanding of potential industry impacts. The planned effective date of the updated generator is Jan. 1, 2026.

Hemphill said the Task Force exposed a draft actuarial guideline on asset adequacy testing (AAT) when there is reinsurance ceded. The Task Force plans on discussing comments received at the Fall National Meeting, as well as discussing specifically: 1) the scope of the actuarial guideline; and 2) the level of aggregation of results (e.g., by line of business for a given counterparty or by counterparty) during interim meetings leading up to the Fall National Meeting.

Chupp made a motion, seconded by Commissioner Arnold, to adopt the report of the Life Actuarial (A) Task Force. The motion passed unanimously.

### 4. Adopted the Report of the Accelerated Underwriting (A) Working Group

Commissioner Houdek said the Accelerated Underwriting (A) Working Group met Aug. 6, July 11, June 13, and April 3. During these meetings, the Working Group established a work plan, followed it, and adopted a guidance document for state insurance regulators on accelerated underwriting in life insurance and a referral to the Market Conduct Examination Guidelines (D) Working Group to consider revisions to the *Market Regulation Handbook*. Commissioner Houdek noted that the project history for the *Regulatory Guidance and Considerations* (Attachment Three) explains that the effort to develop regulatory guidance started years ago, with the Educational Report adopted by the Life Insurance and Annuities (A) Committee in 2022. Commissioner Houdek explained that a small drafting group met biweekly during 2022 to develop draft regulatory guidance that was exposed for comment in January 2023. Comments were submitted in the spring of 2023, but revisions to that draft were paused for the remainder of 2023 while the Innovation, Cybersecurity, and Technology (H) Committee finished the *Model Bulletin on the Use of Artificial Intelligence (AI) Systems by Insurers* (AI Model Bulletin) and the Big Data and Artificial Intelligence (H) Working Group finished the AI life survey. Both projects were completed in December 2023.

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During its April 3 meeting, the Accelerated Underwriting (A) Working Group devised a work plan to complete the regulatory guidance and referral by the Summer National Meeting. Through April and May, a drafting group met biweekly to revise the January 2023 draft guidance document and referral in light of the completion of the AI Model Bulletin and AI life survey. During its June 13 meeting, the Working Group reviewed revised drafts, dated June 3, 2024. The June 3 drafts were exposed for a public comment period that ended June 30. A comment letter on the regulatory guidance was submitted by Center for Insurance Research—CIR and several consumer representatives, and another letter came from the ACLI.

The Working Group met July 11 and reviewed the comments, revised the draft, and exposed the revised July 11 draft for a final comment period to catch any unresolved issues or mistakes of fact. This final comment period ended July 26. The NAIC consumer representatives submitted the only comment letter, reiterating earlier concerns. The Working Group met Aug. 6 and adopted the July 11 *Regulatory Guidance and Considerations* and the June 3 market regulation referral.

Director French said that based on the length of time spent on this project and the public exposure periods over the past two years, she feels comfortable with having the Life Insurance and Annuities (A) Committee consider the adoption of the July 11 *Regulatory Guidance and Considerations* and the June 3 market regulation referral. Benchaaboun said that the regulatory guidance and referral was a group effort and that he thinks the final product is excellent. Gendron said that he has been involved with the small drafting group. He echoed Benchaaboun's comments and said he supports the adoption of the draft.

Gendron made a motion, seconded by Commissioner Arnold, to adopt the report of the Accelerated Underwriting (A) Working Group, including its Aug. 6 (Attachment Two), July 11 (Attachment Two-A), June 13 (Attachment Two-A-1), and April 3 (Attachment Two-A-2) minutes. The motion passed unanimously.

Gendron made a motion, seconded by Commissioner Zimmerman, to adopt the July 11 *Regulatory Guidance and Considerations* (Attachment Three) and the June 3 Market Regulation referral (Attachment Four).

### 5. Heard an Update on the Life Workstream of the Special (EX) Committee on Race and Insurance

Commissioner Fowler reported that Life Workstream of the Special (EX) Committee on Race and Insurance met Aug. 5, April 25, and March 28. During its March 28 meeting, The Life Workstream continued its focus on barriers to access to life insurance for people in underserved communities, focusing on criminal history. He reported that the Life Workstream heard several interesting presentations providing different perspectives on how justice-impacted individuals continue to face barriers long after committing a crime. The Life Workstream heard from Chastity Murphy (U.S. Department of the Treasury—Treasury Department) about some of the current initiatives at the Treasury seeking to address barriers in financial services for justice-impacted communities. The Life Workstream also heard from Jo-Ann Wallace (National Legal Aid and Defender Association [NLADA] Mutual Insurance Co., a Risk Retention Group). Wallace spoke about the obstacles created by the intersection of racial bias and a criminal record. Wallace said the negative public perception around individuals with criminal records acts as a barrier for many businesses to engage with this community. She suggested some ways the NAIC might help remove barriers to insurance for people with a criminal record.

Additionally, the Life Workstream heard from Shannon Ross (The Community). The Community is an organization focused on correcting the common misperceptions about justice-impacted individuals through videos, presentations, and conferences; Ross is also host of the "All In All Out" podcast. Ross spoke about his personal experiences trying to purchase life insurance as a formerly incarcerated individual. The Life Workstream heard from Raymond Robinson (Raymond Robinson Group LLC). He spoke about the challenges he has experienced in finding suitable life insurance products for individuals with a criminal history. The Life Workstream also heard from Peter Kochenburger (NAIC Consumer Representative and Southern University Law School), who spoke about

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the use of criminal history data in insurance. Commissioner Fowler said recordings of these presentations are posted on the Special (EX) Committee on Race and Insurance's web page on the NAIC website.

Commissioner Fowler said the Life Workstream also met April 25. During this meeting, it heard a presentation from the ACLI on the use of criminal history in life insurance underwriting. The Life Workstream also finalized two work products. The first is the *Financial Wellness Resource Guide* (Attachment Five), which is a project started by the 2023 Life Workstream. This document highlights financial literacy initiatives in Washington, DC; Maryland, and Oregon. Commissioner Fowler said the hope is that in the future, additional states and outside organizations will add information to the guide so that it can become a robust resource for states looking to implement financial literacy initiatives. The Life Workstream also adopted an endorsement in support of state legislation requiring a financial literacy course as a prerequisite to high school graduation (Attachment Six). Studies show that mandatory financial literacy courses in high schools make a measurable difference in the lives of kids in underserved communities.

Additionally, Commissioner Fowler reported that the Life Workstream met Aug. 5. Sharon Dietrich (Community Legal Services of Philadelphia) gave a presentation on clean slate initiatives and had some questions and comments about the April ACLI presentation. The Life Workstream exposed a draft survey asking about insurers' use of criminal history in underwriting. The survey is 11 questions, cut back from a broader initial draft that was looking to gather information about the use of criminal history relative to producer engagement, company operations, use of data, product design, and its use in underwriting. The draft is narrowly focused on life insurance underwriting. It was exposed for a xx-day public comment period ending Sept. 5. The Life Workstream plans to schedule a meeting in late September to discuss any feedback received.

Director French asked if the survey was going to be something that state insurance regulators could make voluntary for their domestic insurers. Commissioner Fowler said that there was no intention to make the survey mandatory. He said that the survey is an effort to understand this slice of the market better.

Commissioner Ommen said that the workstreams are doing a good job, but he is concerned that there may not be a lot of collaboration among the Life, Health and Property/ Casualty Workstreams, as well as other groups at the NAIC that are working in areas that may touch on these issues, like the Accelerated Underwriting (A) Working Group and the Innovation, Cybersecurity, and Technology (H) Committee and its groups. Commissioner Ommen suggested that a group could be formed to combine these efforts and increase the collaboration between the overlapping work occurring in the three separate workstreams and elsewhere.

### 6. Heard Presentations from Securian Financial and Athene on Illustrations

Andersen said that as a follow-up to the illustration discussion during the Spring National Meeting, Athene will speak about annuity illustrations, and Securian will present on life insurance illustrations. As the Life Insurance and Annuities (A) Committee and the Life Actuarial (A) Task Force continue with efforts that include the review and analysis of illustrations and related materials, it is important to know how the more highly regulated parts of the sales process, like illustrations, relate to information that is less heavily regulated.

Brian Rock (Securian Financial) reviewed life insurance illustration laws and discussed how illustrations might be used along with other types of materials that might be presented to a consumer. He summarized the provisions in the *Life Insurance Illustrations Model Regulation* (#582), which regulates how life insurance companies present policy illustrations to potential buyers. The regulation aims to ensure that the life insurance illustrations are clear, accurate, and not misleading. It standardizes how insurers present their products to prevent consumers from being misled by overly optimistic or unclear illustrations. Rock said Model #582 applies to all group and individual life policies with the exception of variable life, credit life, and policies with no illustrative death benefits exceeding \$10,000. Model #582 requires descriptions of premiums required, policy features, riders, and options both

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guaranteed and nonguaranteed. He said Model #582 requires numeric summary information and tabular detail information along with disclosure requirements. Model #582 also requires that an illustration be provided to a consumer at the time of application and at the time of policy delivery, if an illustration is used.

Rock explained that Model #582 defines three types of illustrations and applies to each: 1) a basic illustration, which is a ledger or proposal used in the sale of a life insurance policy that shows both guaranteed and nonguaranteed elements; 2) a supplemental illustration, meaning illustrations furnished in addition to the basic illustration that may be presented in a format differing from the basic illustration, but may only depict a scale of nonguaranteed elements that is permitted under the basic illustration; and 3) an in-force illustration, which is an illustration furnished at any time after the policy has been in force at least one year. Model #582 also requires annual certifications by an illustration actuary that the disciplined current scale used in illustration is in conformity with all associated standards of practice and this regulation.

Rock said the NAIC adopted Model #582 in 1995. Since that time, there has been continued evolution in product design, including the introduction of benefits that are tied to an index or indices. Although these policies are also subject to Model #582, not all of their features are explicitly referenced in the model. This has resulted in a lack of uniform practice in its implementation. He said as indexed universal life (IUL) products grew in popularity, concerns about the methods insurers used to illustrate potential returns also rose. In response to these concerns, the NAIC developed *Actuarial Guideline XLIX—The Application of the Life Illustrations Model Regulation to Policies with Index-Based Interest* AG 49 in 2015. AG 49 sets standards for how IUL policies could be illustrated, aiming to ensure that consumers received more realistic and consistent information. AG 49 placed limits on the assumed interest rates that could be used in an illustration and introduced rules on the treatment of policy loans, particularly when illustrating the impact of borrowed or borrowing against the policy's cash value.

Rock said that after implementation of AG 49, the life insurance industry adjusted its practices and complied with all regulations. He said new and more complex products and features, such as multipliers, were developed that were still technically compliant with AG-49, but they raised concerns amongst state insurance regulators and consumer advocates. This led to the development and adoption of AG 49-A in 2020. This regulation addressed these new product features by enhancing provisions on limits to the maximum crediting rate and refining the rules around policy loan illustrations. Most recently, in 2023, AG 49-A was further revised to limit the maximum crediting rate and control for the illustrated leverage on the hedge budget used for an indexed account.

Rock said it is important to note that individual carriers may also have policies and procedures for agents to follow when selling their products, including licensing and appointment requirements, sales practice requirements on advertising, disclosures, illustrations, suitability, sales to seniors and vulnerable adults, premium financing requirements, unfair trade practices, policies against specific sales concepts, such as stranger owned life insurance, captive insurance sales strategies, and sales rebating concepts. There could also be requirements on replacements, processes around complaints and compliance with requirements for agents.

Rock spoke about illustration practices and consumer presentations. He said there are carrier-generated presentations and field-generated presentations. Carrier-generated presentations are materials or tools provided by the insurer for the agent to use. Some of the materials may be consumer-facing, while other materials may be educational for the agent. Product illustrations are carrier-generated presentations and must comply with the regulations covered earlier in the presentation. Optional reports may also be carrier-generated. That includes things like policy charges or internal rates of return for specific scenarios or upon death. These may be developed to help customers better understand the need for life insurance and include insurance need calculators, estate tax projection tools, business buy/sell opportunities, deferred compensation, or corporate owned life insurance (COLI) opportunities. Marketing materials are also carrier-generated and include consumer brochures and case studies on how products or features within the products work.

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Rock said field-generated presentations are developed by or provided from outside the insurer and are used by an agent or an advisor. Some examples of field-generated presentations include technology vendors to help advisors and customers better compare products and features. Field-generated materials may bring illustrated values to life through visual aids or include other online flexibility to help customers better understand how their choices impact the illustration, such as what happens when one starts taking income at different ages or different distribution amounts. Field-generated materials could also include conceptual materials that discuss how certain life insurance or structures might be used. Agent-generated marketing materials show agents discussing products in their own voice. Rock said insurers may have different rules for reviewing agent-generated marketing materials.

Rock then summarized some of the Financial Industry Regulatory Authority (FINRA) rules that can apply to life illustrations. Rule 2210 lays out rules for communications with the public. This rule details that communications must be based on principles of fair dealing executed in good faith. Communications must be fair and balanced and provide a sound basis for evaluating the facts with respect to any particular security or type of security. Communications must provide balanced treatment of the risks and potential benefits, be consistent with the risks of fluctuating prices and the uncertainty of dividends or rates of return and yield inherent to investments. Communications must provide details and explanations appropriate to the audience and must not miss omit any material factor qualification that could cause the communication to be misleading. Communications must not make any false, exaggerated, unwarranted, promissory, or misleading statements or claims and must not contain any untrue statement of material facts or otherwise be false or misleading.

Rock said that FINRA Rule 2211 provides guidance in addition to Rule 2210, specific to variable life and variable annuities. It includes general considerations around product identification and liquidity. He said this includes claims about guarantees and then specific considerations around historical performance, hypothetical illustrations and what may be used to demonstrate how variable life insurance operates and a maximum of 12% gross rate for investment returns, providing one of the returns is a 0 % gross rate.

Mike Consedine (Athene) and Adam Politzer (Athene) spoke about the history and development of annuity illustrations with a focus on the *Annuity Disclosure Model Regulation #245* and Athene's experience in its day-to-day application. Consedine said that Athene has a long history of selling fixed indexed annuities and was actively involved in the development of Model #245. Athene's commitment to clear, comprehensive, and transparent consumer communication has always been a guiding principle, and he said he believes that Model #245 plays a crucial role in achieving these goals. However, only 10 states have adopted the current provisions in Model #245 addressing illustrations. Increased adoption among the states would ensure more consistency in how insurers approach annuity illustrations, providing a uniform standard that benefits both consumers and the industry. The NAIC promoting consistency and uniformity in this area would go a long way in assisting both companies and consumers alike.

Consedine said that despite the low adoption rate, Athene finds that Model #245 works reasonably well, although there are still challenges regarding adequate disclosure consistency in illustrating nonguaranteed elements and clearly showing minimum guarantees. These elements have proven essential in helping consumers understand the potential performance of their annuity contracts. Consedine said that Athene continues to support the application of Model #245. He added that with broader state adoption, along with other measures to simplify the marketing and sale of needed guaranteed income products, the effectiveness of this regulation can be further enhanced. This would ensure that all consumers receive the highest standard of information and protection.

Poltzer provided additional detail about Athene's experience with Model #245. Section 6 governs illustrations for fixed and fixed indexed annuities with nonguaranteed elements. The focus of this section is on making sure there is adequate disclosure. This section defines with mathematical precision how the illustration should be completed. There is a big focus on the minimum guarantee within the contract, which Athene thinks is critically important. The focus is on a particular index track record and, in particular, the last 10 or 20 years of performance of the

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index. Model #245 does not allow the illustration of bespoke indices that have less than 10 years of history. An index must have 10 years of history in order to illustrate it.

Politzer highlighted the disclosure language that Model #245 requires to be presented to consumers: 1) the illustration is hypothetical; 2) the purpose of an illustration is to explain how the contract works; and 3) the illustration is not a promise of performance. These disclosures are critical to the effectiveness of the illustration. Politzer explained that Model #245 requires that certain information must be included in the illustrations. There must be an illustration of the “worst-case scenario” for the consumer, which, for a fixed indexed annuity, shows 0 credits in any year where the index has negative returns. This part of the illustration highlights the minimum guarantees of the contract. The illustration also shows nonguaranteed elements of the contract from the most recent 10 years to show the mechanics of the contract—what happens when the index goes up and when the index goes down. Another prescribed exhibit in the illustration must show the most recent 10 years of performance, the highest 10 years of the last 20 years, and the lowest 10 years of the last 20 years. This makes clear that there is a range of outcomes and illustrates the most logical ones. It is prescribed so that each carrier has to do it the same way. However, only 10 states have adopted the current version of Model #245.

Politzer said, for the most part, illustrations are fairly consistent in the remaining 40 states. He said that there are some deviations in practice, the most common being companies will illustrate more than 10 years of data if it is available. There are companies in the 40 states that also illustrate bespoke indices without 10 years of history. He said that Athene has been discussing that the most recent 10 years and even the most recent 20 years have been a strong set of markets for the S&P 500, which is considered the benchmark index and the index used most commonly in Athene’s products. So, any reliance on that period of data is going to show an optimistic forecast of the contract, as good as any other asset class. Athene has, as a result, added some additional disclosures highlighting that this had been a higher set of years of performance. Athene has been following Model #245 for a long time and has found that illustrations are helpful in promoting annuities and helping customers use them for their retirement needs. He said Athene has received few complaints about illustrations over the years. Ultimately, the performance of Athene’s contracts has been a testament to how well the illustrations have been working.

Politzer reiterated that variable annuities, including registered index-linked annuities (RILAs), must also comply with FINRA Rule 2210 and U.S. Securities and Exchange Commission (SEC) Rule 156 effective Sept 23, 2024. He highlighted three ways the Model #245 differs from the SEC and FINRA rules: 1) the NAIC rules are much more prescriptive, while the FINRA rules are more focused on how the contract works; 2) all materials go through a rigorous review and approval process with FINRA; and 3) FINRA will not approve the use of any pre-inception index performance. Politzer reviewed an illustration of an Athene RILA. He explained that the illustration shows how the buffer upgrades protection on the way down, and then it shows an illustration of how either a cap rate or a participation rate would work within the RILA product. It is really just a hypothetical to explain the key features of the product.

Commissioner Humphreys said he attended a presentation at the NAIC/Consumer Liaison Committee meeting that talked about illustrations and reviewed modeling of certain illustrations that showed a high failure rate. He said there is a gap between what industry and the consumers are saying with respect to illustrations that is more significant than he would normally expect. He asked for some clarification regarding this gap.

Richard Webber (NAIC Consumer Representative) gave the presentation at the NAIC/Consumer Liaison Committee meeting, and he explained that the presentation he gave showed a different way of looking at illustrations. He said life insurers produce illustrations in conformance with Model #582. The problem is that Model #582 is 30 years old, and it did not contemplate indexed products that use an outside reference rather than a disciplined scale or a declared rate. The approach he presented reviews illustrations from a real-world standpoint. The illustration is produced at a constant rate of return, and that does not exist in nature. He said there are fluctuations between the 0% guarantee, or whatever the guarantee is, and the current cap. The



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sequence of returns is the reality of what will occur with the policy and what happens when the illustration is not only showing a substantial input of premium but then a substantial extraction of cash value later on, both in withdrawals and loans. He said that one single interest rate does not take a sequence of returns into account. Webbr said his analysis of the numbers in an illustration (by taking and running thousands of scenarios) found in one case as much as a 95% failure rate. He said he would like to work with the Life Insurance and Annuities (A) Committee and the Life Actuarial (A) Task Force to find ways of bringing these two worlds together—the regulated illustration world and something that might reflect reality in a more modern way.

Commissioner Ommen said that he appreciated the support indicated for Model #245. However, he asked if Athene, in the 40 states that do not have the model, illustrates newer, younger indices? Politzer said that Athene illustrates those indices in the states where it is allowed. He said that Athene believes that those indices are good for their customers and for the industry in general and that there is a demand for illustrations of that information. At times, especially in the current economic environment, Athene can produce very high illustrations. He said in a couple of situations, Athene has decided not to illustrate because the company was not comfortable putting the illustration in front of consumers, but it has enhanced its disclosures and want to guard against setting expectations too high.

Commissioner Ommen said that Model #245 is prescriptive, but he asked in those states without it, what are some of the requirements surrounding the use of annuity illustrations beyond using good judgment. He asked what industry is doing to curb the practice of using illustrations that are beyond reasonable expectations. Politzer said he has been in some groups talking about forecasting and that there are some models out there that do produce some reasonable forecasts, but that would open a whole line of inquiry about how to set parameters for those forecasts. Politzer said, at this point, it is just a matter of using judgment to look at things and asking whether the company is comfortable putting an illustration in front of their advisors and customers.

Gendron said the presentation before the NAIC/Consumer Liaison Committee showed a number of life insurance illustrations that were sold with the idea that there would be a certain amount of income coming off of those life insurance policies. Gendron asked whether Rock thought there was a problem with any of those sales. Rock replied that what is being seen is a sensitivity to insurance products and some of the patterns of returns, specifically when a person is leveraging money. He said that maybe some of those were taking loans, and different things were premium financed in order to get income to repay those loans. So, some of those sales are showing the leverage that one can get out of a life insurance policy. He said that the way AG 49 works is that it shows the level of return and not the pattern of returns. He said that what the presentation is showing is some of the sensitivity for those risks embedded in some of those products.

Gendron agreed with Rock's assessment, but he wondered whether it is a problem, in Rock's opinion, if a producer is making a representation about being able to do certain things with a life insurance product, and the illustrations are being used to support that promise. Rock replied that if a producer is guaranteeing a return or stating that a future scenario will happen and has not identified the risks embedded in that, then that is a problem. He said that is why there are numerous disclosures and different scenarios embedded in the illustration to help expand upon some of those risks that are associated with the product sale. Gendron said he generally agreed that the problem lies with the marketing of these products, but there might be some company oversight that would be helpful to ensure that representatives in the marketplace are not using their documents in overly aggressive ways.

Gendron said that on the annuity side, the presentation at the NAIC/Consumer Liaison Committee did not identify annuity illustrations, but there was a working group a number of years back that heard from consumer representatives that models were being created using back testing. He said Rhode Island has the current model #245, so he would not see illustrations of these newer indices. However, he said he heard Politzer express some hesitation to illustrate in some situations, and he asked whether Politzer thought there should be a different set of rules to bring up all boats. Politzer said Athene is advocating for full 50 state adoption of the current Model

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#245. He said there is no question that as yields rose, especially over the past three years and rates got much higher, the same mathematical concept applied in the past has resulted in unreasonable outcomes with some of the newer indices. He said that some of this gets technical and involves the way these indices are constructed. He said they are excess return indices and that part of the issue when illustrating them against the historical low interest rate environment, but with rates from today, is that more unreasonable outcomes are produced than in the past. He said the challenge is how to get information to people without setting an unreasonable set of expectations because he believes that these indices are good for consumers in a lot of ways and that there is demand to understand how the indices will work and in what environments.

Gendron asked whether Politzer thought that producers fully understand these indices enough to explain them to a doctor or a teacher. Politzer said that Athene was going to great lengths as a company to focus on education. He offered to introduce the Committee to an index standard group it has worked with to develop training on how bespoke indices work and to make sure Athene's advisors have all the information they need to sell these products. Consedine emphasized that they are committed as an industry to training and education. He said that he expects there to be continuing demand for guaranteed income products to help address the retirement crisis in this country. He said that industry, state insurance regulators, and consumers would all benefit from consistency in the marketplace and if there were uniform rules of the road, many of the issues being discussed now would resolve themselves over time.

Andersen reported that state insurance regulators are reviewing life and annuity illustrations and other marketing materials. He said they plan to develop findings and discuss how best to address short-term and long-term issues. Director French said that the presentation was intended to be a springboard to future discussions, and she looks forward to future conversations on this topic.

Having no further business, the Life Insurance and Annuities (A) Committee adjourned.

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Life Insurance and Annuities (A) Committee  
Virtual Meeting  
July 15, 2024

The Life Insurance and Annuities (A) Committee met July 15, 2024. The following Committee members participated: Judith L. French, Chair (OH); Doug Ommen, Co-Vice Chair, represented by Mike Yanacheak (IA); Carter Lawrence, Co-Vice-Chair, represented by Bill Huddleston (TN); Mark Fowler (AL); Barbara D. Richardson (AZ); Karima M. Woods (DC); Grace Arnold represented by Fred Andersen (MN); Justin Zimmerman (NJ); Adrienne A. Harris represented by Bill Carmello and Mark McLeod (NY); Glen Mulready represented by Andrew Schallhorn (OK); Elizabeth Kelleher Dwyer (RI); Scott A. White (VA); and Nathan Houdek (WI). Also participating was Rachel Hemphill (TX).

1. Adopted its Spring National Meeting Minutes

Cabinet Executive Officer Richardson made a motion, seconded by Commissioner Fowler, to adopt the Committee's March 17 minutes (*see NAIC Proceedings – Spring 2024, Life Insurance and Annuities (A) Committee*). The motion passed unanimously.

2. Adopted the 2025 Valuation Manual Amendments

Hemphill explained that the Life Actuarial (A) Task Force adopted 14 Amendment Proposal Forms (APFs) to be effective for the 2025 *Valuation Manual*. Several of the APFs are primarily clarifying, correcting, or keeping existing requirements up to date. Hemphill reviewed seven of the APFs with more notable changes to requirements: (1) APF 2023-12: Based on findings from the review of *Actuarial Guideline LIII—Application of the Valuation Manual for Testing the Adequacy of Life Insurer Reserves* (AG 53) filings, this change explicitly requires a reflection of equity return volatility in cash-flow testing; (2) APF 2023-13: Adds explicit requirements for international mortality to principle-based reserving for life products; (3) APF 2024-01: Requires the qualified actuary for principle-based reserving to meet the American Academy of Actuaries' (Academy's) Specific Qualification Standard with respect to their opining areas; (4) APF 2024-05: To better match liabilities and assets, the valuation rate for funding agreements may be determined monthly rather than annually; (5) APF 2024-06: To better match liabilities and assets, the valuation rate for non-jumbo contracts may be determined daily rather than quarterly; (6) APF 2024-07: Requires variable annuity principle-based reserving prescribed assumption updates as ongoing maintenance; and (7) APF 2024-10: For credit disability, removes the 12% increase to claim incidence rates based on more recent experience.

Hemphill said that APF 2020-10 was included for completeness because it was adopted by the Life Actuarial (A) Task Force as the gatekeepers for the *Valuation Manual*. However, it does not need to be adopted by the A Committee because it is a health item that was also adopted by the Health Actuarial (B) Task Force and the Health Insurance and Managed Care (B) Committee.

Cabinet Executive Officer Richardson asked whether the Task Force had seen an increase in mortality issues as a result of excessive heat or climate issues. Hemphill said that the Society of Actuaries (SOA) is looking into the issue and published a collection of articles, essays, and research reports that examine the impacts of excessive heat on mortality, morbidity, property damage, and other costs, and the applications to actuarial practice and quantification of risks resulting from excessive heat, which can be accessed on their website. Hemphill said, in addition, the Life Actuarial (A) Task Force meeting at the Summer National Meeting will hear a presentation on

mortality trends, and Hemphill said she will be sure to specifically ask how climate is being reflected. Director French suggested that this might be an area to explore in a presentation at a future meeting.

Andersen made a motion, seconded by Commissioner Houdek, to adopt the 2025 *Valuation Manual* amendments. (see *NAIC Proceedings – Summer 2024, Executive (EX) Committee and Plenary, Attachment Three*). The motion passed unanimously.

Having no further business, the Life Insurance and Annuities (A) Committee adjourned.

SharePoint/NAIC Support Staff Hub/Member Meetings/A Cmte/2024 Fall National Meeting/7-15-24 ACmte min final

Draft: 8/7/24

Accelerated Underwriting (A) Working Group  
Virtual Meeting  
August 6, 2024

The Accelerated Underwriting (A) Working Group of the Life Insurance and Annuities (A) Committee met Aug. 6, 2024. The following Working Group members participated: Nathan Houdek, Chair, and Lauren Van Buren (WI); Grace Arnold, Vice Chair, represented by Sarah Gillaspey (MN); William Leung (MO); Ross Hartley (ND); Daniel Bradford (OH); Matt Gendron (RI); and David Hippen (WA).

1. Adopted its July 11 Minutes

Hippen made a motion, seconded by Gendron, to adopt the Working Group's July 11 minutes (Attachment Two-A). The motion passed unanimously.

2. Adopted the July 11 Draft *Regulatory Guidance and Considerations* Document and June 3 Market Regulation Handbook Referral

Commissioner Houdek said the Working Group received a comment letter on the July 11 draft regulatory guidance and considerations document from several NAIC-funded consumer representatives. Commissioner Houdek said the comment letter was posted to the Working Group's web page. Gendron said he reviewed and appreciated the comments and that they reiterated previously raised comments that had been discussed and addressed in the current draft. Gendron said the July 11 draft looks good and is ready to be adopted.

Gendron made a motion, seconded by Gillaspey, to adopt the July 11 draft regulatory guidance and considerations document (*See NAIC Proceedings – Summer 2024, Life Insurance and Annuities (A) Committee, Attachment Three*) and the June 3 *Market Regulation Handbook* referral (*See NAIC Proceedings – Summer 2024, Life Insurance and Annuities (A) Committee, Attachment Four*). The motion passed unanimously.

3. Discussed its Next Steps

Commissioner Houdek explained that the regulatory guidance and considerations document and *Market Regulation Handbook* referral would be included in the Working Group's report to the Life Insurance and Annuities (A) Committee at the Summer National Meeting. It is possible that the documents will be considered for adoption at that time.

Having no further business, the Accelerated Underwriting (A) Working Group adjourned.

SharePoint/NAIC Support Staff Hub/Member Meetings/A Cmte /AUWG/AUWG min 8-6-24 final

Draft: 8/6/24

Accelerated Underwriting (A) Working Group  
Virtual Meeting  
July 11, 2024

The Accelerated Underwriting (A) Working Group of the Life Insurance and Annuities (A) Committee met July 11, 2024. The following Working Group members participated: Nathan Houdek, Chair, and Lauren Van Buren (WI); Grace Arnold, Vice Chair, represented by Sarah Gillaspey (MN); William Leung (MO); Ross Hartley (ND); Maggie Reinert and Megan VanAusdall (NE); Daniel Bradford (OH); and Matt Gendron (RI); and David Hippen (WA). Also participating were: Nour Benchaaboun (MD) and Tomasz Serbinowski (UT).

1. Adopted its June 13 and April 3 Minutes

The Working Group met June 13 and April 3 to discuss next steps for finalizing the regulatory guidance document and exposing it for a public comment period. Commissioner Houdek said the minutes from these two Working Group meetings were included in the meeting materials posted to the website.

Amann made a motion, seconded by Gendron, to adopt the Working Group's June 13 (Attachment Two-A-1) and April 3 (Attachment Two-A-2) minutes. The motion passed unanimously.

2. Discussed Comments Received on the June 3 Draft *Regulatory Guidance and Considerations* Document

Commissioner Houdek said that the Working Group received two comment letters on the June 3 draft *Regulatory Guidance and Considerations* document. One letter was from the American Council of Life Insurers (ACLI), and the other was signed by several NAIC-funded consumer representatives. Commissioner Houdek explained that a chart was posted to the Working Group's webpage showing the comments received next to the language in the June 3 draft *Regulatory Guidance and Considerations*. Commissioner Houdek said he was going to use the chart to facilitate the review of the comments received and that ACLI and the consumer representatives would be given the opportunity to speak to each of their comments. Commissioner Houdek said he hoped that by the end of the meeting, there would be a consensus document to expose for a final exposure period before adoption by the Working Group prior to the Summer National Meeting in Chicago.

A. Discussed Introduction

Commissioner Houdek said that the first comment to review was from the consumer representatives addressing the introduction in the June 3 draft *Regulatory Guidance and Considerations* document. Brendan Bridgeland (Center for Insurance Research—CIR) explained that this comment suggests the inclusion of a new section (C) identifying “benefits and protections on behalf of the consumer/applicant.” Bridgeland said it is important for the regulatory guidance to acknowledge that protection of consumers is one of the vital goals of implementing and monitoring accelerated underwriting (AU) programs and mentioning them here ensures they do not get overlooked as the intended beneficiaries of the review. Commissioner Houdek said that the proposed language seeks to modify language that functions as a table of contents by identifying the sections addressed in the regulatory guidance, so adding this language without corresponding information in the body of the document does not work. Commissioner Houdek said the reason for having the Accelerated Underwriting (A) Working Group is consumer protection and is the entire purpose of this document.

B. Discussed Regulatory Considerations A(2)

The next comment was a proposed revision to Section A(2) suggested by the consumer representatives:

“External data sources, Algorithms or Predictive Models are based on sound actuarial principles, including a rational explanation why a rating variable is correlated to expected loss or expense, and why that correlation is consistent with the expected direction of the relationship, and how the inclusion of inputs from multiple data sources interacts in generating an expected loss or expense.”

Bridgeland said the suggested language seeks to address the situation where an AU program uses multiple different data points or sources. He said outcomes need to be evaluated to measure consumer impacts because two data points that correlate with risk may turn out to be duplicative and produce inconsistent results when applied together instead of singly. Bridgeland said that he raised this issue during the Innovation, Cybersecurity, and Technology (H) Committee meeting on June 28.

Bridgeland shared a historical example of when the use of multiple data points led to inaccurate results. Bridgeland said that many years ago, there was a weight curve in mortality tables, and people on the high end and the low end were considered high risk. When the information was reviewed later, it became clear that because heavy smokers are often on the lighter end of the weight scale, it resulted in the correlation that everyone on the lighter end of the weight scale was a smoker, and as a result, people were overcharged for years due to the confusion caused by using multiple data points without clear differentiation. Bridgeland said the inclusion of the suggested language is to ensure that regulators keep an eye on how potential data points are being used and how they are used together. Bridgeland said that there seems to be a lot of potential for overlap, especially in areas such as credit scores or mortgage payments that are used in rating. Bridgeland said these data points seem to be measuring some basic financial factors, which raises the prospect that if you have an error in one of them, they could impact the whole result, which is another reason why it is important to allow consumers a way to correct errors in their information.

Commissioner Houdek said he agreed with the comments and concerns raised by Bridgeland regarding inputs from multiple data sources and suggested that instead of using the suggested detailed language, which can be a bit confusing, to use the following:

“External data sources, Algorithms or Predictive Models are based on sound actuarial principles, including a rational explanation why a rating variable or a combination of variables, is correlated to expected loss or expense, and why that correlation is consistent with the expected direction of the relationship.”

Bridgeland said he liked the simplified language. Gendron said he also liked the simplified language and suggested that this concept should be considered in the context of some of the questions in the guidance referencing external data sources.

Birny Birnbaum (Center for Economic Justice—CEJ) said that the issue Bridgeland raised is two-fold: 1) multiple factors in the AU algorithm can interact with one another, and 2) the algorithm as a whole may have a discriminatory effect. Birnbaum said it is not just looking at components of the algorithm, there is a need to examine the effect of the algorithm as a whole, so the language should recommend considering the algorithm as a whole rather than suggesting parsing out specific components of it. Gillaspey pointed out that the existing

language does reference the algorithm as a whole before mentioning rating variables or a combination of variables.

C. Discussed Regulatory Considerations A(5)

Comments were submitted by both the consumer representatives and the ACLI suggesting revisions to Section A(5): “Reason(s) for an Adverse Underwriting Decision are provided to the consumer along with all information upon which the insurer based its Adverse Underwriting Decision.” The consumer representatives’ comment letter suggested the following revisions:

“5. Reason(s) for an Adverse Underwriting Decision are provided to the consumer - in language understandable by the typical consumer - along with all information upon which the insurer based its Adverse Underwriting Decision. This should include a sufficiently detailed description of what consumer data the insurer used in its determination, and where such data was reported, such that the consumer is able to review and request correction of any errors in their own data. Generic descriptions such as “low credit score,” or “preexisting health conditions” do not meet this requirement.”

Peter Kochenberger (NAIC Funded Consumer Representative) said that the consumers’ suggested language is much more specific because otherwise standard disclosures provide very little information. Kochenberger said consumers are asking for data about themselves (not proprietary information involving the algorithm), and a clear standard for transparency should be established that provides sufficient information to consumers to correct erroneous information that impacts their ability to purchase insurance.

The ACLI suggested the following revisions:

“5. Reason(s) for an Adverse Underwriting Decision are provided to the consumer, along with all information upon which the insurer based its ~~regarding an~~ Adverse Underwriting Decision will be provided to the consumer consistent with applicable state insurance privacy law(s).”

Colin Masterson (ACLI) explained that the June 3 draft *Regulatory Guidance and Considerations* document contemplates an insurer providing the consumer with “all information” involved in an adverse underwriting decision. The current legal standard and industry practice is to provide the specific reason for the adverse underwriting decision and not all underlying information. In addition, some insurers using various third-party algorithms may be bound by contract to not disclose information regarding what is considered to be and promoted as “proprietary” algorithms. It is also observed that this and several following sections touch upon privacy requirements, and Masterson said that perhaps it would be sounder to point to those requirements, which may differ across jurisdictions.

Gendron said that while asking for “all information” may go too far, there needs to be sufficient information provided to a consumer to inform them of the reason for a negative decision or why they are being rated a certain way. Gendron said the reason is not only so a consumer can correct errors but also to understand that certain behaviors may increase risk (such as smoking), and the consumer may be able to modify those behaviors. Gendron said an example of where erroneous information may be used is in the case of pharmacy records. Gendron gave the example of using his pharmacy rewards card when purchasing items and medication for his parents. He asked how the insurer is able to distinguish between what may be a negative underwriting factor for him versus his parents. Gendron said that, to him, this type of transparency is not negotiable. If the insurer is prevented from



providing that kind of information by claims of there being a proprietary algorithm, then that algorithm should not be allowed to be used.

Serbinowski said he did not think this information implicated confidentiality when it involved personal information about the consumer. Serbinowski said that if the insurer is rating him based on the fact that he is 5 feet, 6 inches tall, but he is actually 6 feet, 5 inches tall, the consumer should have the chance to correct it. If the insurer says the consumer is being rated a certain way because they ride a motorcycle, the consumer should be able to correct that by saying they do not. He asked how a consumer can set the record straight if the insurer will not disclose what information they are looking at and from where they obtained it.

Commissioner Houdek agreed with the sentiments expressed by Gendron and Serbinowski and suggested the following revisions based on the comments:

“5. Reason(s) for an Adverse Underwriting Decision, ~~are provided to the consumer~~ along with all information upon which the insurer based its Adverse Underwriting Decision, are provided to the consumer in language understandable by the typical consumer and consistent with applicable state and federal laws and regulations.”

Benchaaboun supported the suggested revision and explained that it is important for a consumer to understand what information was relied upon in reaching an adverse underwriting decision, which may involve the offering of coverage other than what was applied for. For example, a person who applied for a \$100,000 whole-life policy would be told in simple language that they only qualify for a \$50,000 policy because of specific information provided in the application.

Birnbaum asserted that the current legal standard is inadequate because an insurer would not consider moving a consumer from AU to normal underwriting based on an adverse underwriting decision, so they would not have to provide an explanation. Second, if an insurer is using data not subject to the Fair Credit Reporting Act (FCRA), then there is no requirement that the insurer obtain permission to collect or disclose that information, so the guidance needs to specifically require the insurer to give the consumer the necessary information to dispute the outcome if the data is incorrect. Birnbaum also said that the current requirement for permission to access a consumer’s data under FCRA is also inadequate because consumers do not realize all the information they are granting access to, such as credit information, medical information, motor vehicle reports, and much more. Kochenburger reiterated his concern that the proposal needs to guarantee that a consumer will receive sufficient information to be able to review its accuracy and contest any inaccuracies.

D. Discussed Regulatory Considerations A(6)

Comments were submitted by both the consumer representatives and the ACLI suggesting revisions to Section A(6). The consumer representatives suggested the following revisions:

“6. The insurer establishes and follows written procedures to protect the consumer’s privacy and the consumer’s data and provides a description of these procedures to the consumer at the time of authorization.”

Bridgeland explained that AU programs that utilize customer data to produce underwriting outcomes should never be subject to ad hoc administration. All AU programs should be detailed in writing.

The ACLI proposed the following revisions:

“6. The insurer establishes and follows procedures to protect the consumer’s privacy and the consumer’s data. The insurer’s existing procedures to protect consumer privacy and consumer data apply equally when accelerated underwriting is utilized.”

Masterson explained that the ACLI proposal reframes this consideration in the context of existing protections that apply to data employed in AU.

Commissioner Houdek suggested including the following language in the next draft, which takes into account both proposals, and the Working Group agreed:

“6. The insurer establishes and follows written procedures to protect the consumer’s privacy and the consumer’s data and provides a description of these procedures consistent with applicable state and federal laws and regulations to the consumer at the time of authorization.”

E. Discussed Regulatory Considerations A(7)

Comments were submitted by both the consumer representatives and the ACLI suggesting revisions to Section A(7). The consumer representatives suggested the following revisions:

“7. The insurer has a mechanism in place to correct mistakes if found in consumer data. This mechanism must include disclosure to the applicant of what consumer information was used, and a reasonable, accessible, and clearly described procedure for applicants to correct inaccurate information, with final responsibility to evaluate and correct errors on the insurer, and not in third party vendors or modelers.”

Bridgeland said the consumer representatives’ proposal states with specificity the mechanism for providing information to consumers in order for there to be a meaningful understanding of an insurer’s actions and an opportunity to correct any errors, regardless of a record also being held by a third party. Bridgeland said that there should be the opportunity to correct inaccurate information with the insurer, as well as understand where the information originated to correct it elsewhere as well.

The ACLI suggested the following revisions:

“7. The insurer has a ~~mechanism~~ process in place to ~~correct mistakes if found in~~ assist a consumer data in contacting the originator of a record that the consumer believes to be incorrect.”

And could also include:

“The insurer should also have in place a mechanism to correct undisputed mistakes confirmed by records.”

Masterson said the ACLI proposed revisions reflect the position that insurers must be careful about and are often unauthorized to make changes to consumer records. For example, if a consumer believes something in their medical record is incorrect, the insurer can point the consumer to where it obtained the record, but it does not

have the ability to change the underlying record. Masterson said that, generally, under insurance privacy law, the insurer must notify the consumer as to where it obtained the disputed record.

Commissioner Houdek suggested the following proposal, which revises A(7) and adds a new A(8).

“7. The insurer has a mechanism in place to correct mistakes confirmed by records if found in consumer data.

8. The insurer has a process in place to assist a consumer in contacting the originator of a record that the consumer believes to be incorrect.”

Kochenberger said he was concerned that insurers are in a better position to contact third parties than consumers and a “process” to refer a consumer to a third party without any more specificity does not provide much assurance. Gendron said he liked the proposed (7) and (8) because they address two sides of the issue: 1) if the insurer has erroneous information in their records, and there is evidence of an error, they have to fix it, and 2) if they received the information from elsewhere, they have to tell the consumer where it came from so it can be corrected there as well. The Working Group agreed to include the proposed revisions in the next draft.

#### F. Discussed Regulatory Considerations A(9)

Comments were submitted by both the consumer representatives and the ACLI suggesting revisions to Section A(9). The consumer representatives suggested the following revisions:

“9. The insurer has procedures in place to address the following requirements pertaining to the consumer: Notice Requirements, Opting-Out of (or Opting In to) Data Sharing, Correcting or Deleting Information, Data Portability, and Restricting the use of Data.”

Bridgeland explained that this revision includes an option to opt-in because AU programs should be permitted to allow for opt-ins not just opt-outs.

The ACLI suggested the following revisions:

“9. The insurer has procedures in place to address the following requirements pertaining to the consumer issues, including Notice Requirements, Opting Out of and use/restrictions on Data Sharing, Correcting or Deleting Information, Data Portability, and Restricting the use of Ddata consistent with applicable insurance privacy and other existing laws.”

Masterson said that the ACLI suggests using more general language and referencing applicable privacy laws rather than including references that may not apply to life insurance, such as references to deleting information.

Commissioner Houdek suggested the following revisions:

“9. The insurer has procedures in place to address the following requirements pertaining to the consumer : Notice Requirements, Opting Out of and use/restrictions on Data Sharing, Correcting or Deleting Information, Data Portability, and Restricting the use of Dconsumer data, consistent with applicable state and federal laws and regulations.”

Commissioner Houdek explained that the proposed revisions use more general language to encompass all applicable notice requirements, consistent with applicable state and federal laws. This approach avoids being too narrow and inadvertently eliminating something like an opt-in requirement. The Working Group agreed to include the revisions in the next draft.

G. Discussed Strategies for Review B(6)

Consumer representatives suggested adding a new Strategy for review B(6):

“6. Confirm a life insurer has a mechanism in place to correct mistakes if found in consumer data – and a mechanism by which the consumer can inform the insurer of a perceived mistake and obtain specific and direct corroboration of the insurer’s receipt and action on the notice of mistaken data.”

Bridgeland explained that the consumer representatives suggested adding a new strategy for review, and its importance was discussed previously. The consumers believe that the critical nature of having a mechanism in place to correct errors warrants the inclusion of a mechanism to identify and correct errors as a strategy for review. Commissioner Houdek agreed with the need for a process as was discussed and incorporated into a revised A(7) and the new A(8).

H. Discussed Requests for Information C(3) and C(7)

Comments were submitted by ACLI suggesting revisions to Sections C(3) and C(7):

~~“3. Explain in detail how the company’s discloses to applicants authorization for life insurance what external information is used in its Accelerated Underwriting program and how this external information actually is that may be used in the Accelerated Underwriting program.~~

~~7. How is external data or information about life applicants utilized, stored, and destroyed after the completion of the underwriting process managed consistent with applicable privacy and other related laws and regulations?”~~

Masterson explained that the proposed revisions recommend more general language, rather than specific language that could be interpreted as requiring more detail than is customary or practical. Masterson said that existing practice ensures authorizations describe the information to be gathered and the purposes and uses of that information, which would be the same in connection with AU. Masterson said that while companies follow data minimization procedures, some information must be retained for legal and regulatory compliance purposes. The way the question currently reads, there appears to be a presumption that data or information is “destroyed” after the underwriting process, which is not the case.

Commissioner Houdek explained that these requests for information are intentionally broad to empower regulators to ask more open-ended questions, and regulators can tailor these questions to their specific laws. Gendron said that destroying information would be in contravention of record retention laws. He said that he certainly hopes companies do not do this and said that companies should know their own record retention policies and that insurers should know how long they need to keep information after issuing a policy, and if a policy is never issued, information must be destroyed after a certain number of years. This is the kind of information a regulator may want to ask about. Gendron asked whether there was a better way to word the question.

Birnbaum said the question is how is information about life applicants utilized, stored, and destroyed after the need for the data no longer exists. An insurer is going to maintain underwriting data for as long as the policy is in force to make sure there is no fraud. The question should be rephrased to key into how long information is retained once it is no longer required for the purposes of serving the consumer. Birnbaum also suggested that the question should ask the insurer to document the process that they use. Commissioner Houdek agreed with the comments raised by Gendron and Birnbaum. Gillaspey suggested the following revisions:

“3. Explain and document in detail how the company discloses to applicants for life insurance what external information is used in its Accelerated Underwriting program and how this external information actually is used in the Accelerated Underwriting program.

7. How is external data or information about life applicants utilized, stored, ~~and destroyed~~ after the completion of the underwriting process, and ultimately destroyed?”

The Working Group agreed to include these revisions in the next draft. Commissioner Houdek explained that a revised draft will be exposed for a two-week public comment period ending on July 26. Comments should be sent via email to Jennifer Cook (NAIC) at [jcook@naic.org](mailto:jcook@naic.org). He asked Working Group members, interested regulators, and interested parties to review the draft closely for any errors or mistakes of fact. The goal is to have the Working Group adopt the draft guidance and the market conduct referral during its next meeting in early August.

Having no further business, the Accelerated Underwriting (A) Working Group adjourned.

SharePoint/NAIC Support Staff Hub/Member Meetings/A Cmte /AUWG/AUWG min 7-11-24 Final

Draft: 6/24/24

Accelerated Underwriting (A) Working Group  
Virtual Meeting  
June 13, 2024

The Accelerated Underwriting (A) Working Group of the Life Insurance and Annuities (A) Committee met June 13, 2024. The following Working Group members participated: Nathan Houdek, Chair, and Lauren Van Buren (WI); Grace Arnold, Vice Chair, represented by Sarah Gillaspey (MN); Jason Lapham (CO); Cynthia Amann (MO); Maggie Reinert and Megan VanAusdall (NE); Daniel Bradford (OH); Brett Bache (RI); and David Hippen (WA).

1. Exposed the Revised AU Guidance Document and Referral

Commissioner Houdek said that the focus of the Working Group meeting is to discuss the June 3 revisions made to the Jan. 25, 2023, draft *Regulatory Guidance and Considerations* document and the Jan. 11, 2023, draft *Market Regulation Handbook* referral. Commissioner Houdek explained that a small drafting group met weekly following the April 3 Working Group call to revise the drafts based on the comments received last year, as well as the *Model Bulletin on the Use of Algorithms, Predictive Models, and Artificial Intelligence Systems by Insurers* (AI Model Bulletin) and the results of the AI/machine learning (ML) survey. Commissioner Houdek said the drafting group included Van Buren, legal counsel in Wisconsin, Gillaspey, and legal counsel in Minnesota, who were largely responsible for the drafts exposed last year. Also participating in the drafting group were Lapham, Nour Benchaaboun (MD), Amann, Ross Hartley (ND), Bradford, Matt Gendron (RI), and Mariel Garcia (RI). NAIC staff supporting the Innovation, Cybersecurity, and Technology (H) Committee and its groups participated, including Dorothy Andrews (NAIC), Miguel Romero (NAIC), and Scott Sobel (NAIC).

Gillaspey reviewed the revisions made to the June 3 draft *Regulatory Guidance and Considerations* document (Attachment Two-A). She explained that the guidance document was structurally reorganized to include a brief introduction before laying out the guidance. For better organization, three headings were added: 1) *Regulatory Considerations*; 2) *Strategies for Review*; and 3) *Requests for Information*. The more comprehensive background information was moved to after the regulatory guidance.

Gillaspey explained that the content of the guidance is largely unchanged from the January draft. She said the specific differences include: 1) in A)1, instead of the phrase “unfair bias,” the draft uses the phrase “unfair discrimination”; 2) in A)8, the phrase “or actions” was added; 3) in B)1, The January draft’s phrasing of “...review a life insurer’s initial submission of policy filings...” was changed to “underwriting programs/guidelines.”; 4) in B)4, the phrase “via a model” was added; 5) in C)5, “based on external data or information?” was added as clarifying language; 6) rephrased the following question in C)8 that asked how often does a company audits to ask how a company validates, tests, and audits; 7) in C)8, adding a reference to “Adverse Outcomes,” which keys into the AI Model Bulletin; and 8) removing a couple of questions that were not feasible in practice, such as questions asking what changed as a result of audits and why and asking for a copy of audit reports. Similar questions were removed from the AI Model Bulletin as burdensome to produce and of questionable importance.

Gillaspey explained that the revised guidance relies on definitions from other NAIC work products footnoted in the June 3 draft. Changes were also made to the structure of the background information. The June 3 draft lays out chronologically the NAIC work product related to the state insurance regulator guidance. Since the January draft, several NAIC projects in this area were completed and have been hyperlinked and included as appendices to the regulatory guidance.

Gillaspey reviewed the revisions to the June 3 draft referral (Appendix 2 to the June 3 draft *Regulatory Guidance and Considerations* document). She said minor revisions were made to the referral. The referral was updated to reference the AI Model Bulletin and specifically list the NAIC models that provide the authority to add guidance on accelerated underwriting (AU) in life insurance to the *Market Regulation Handbook*. The revised referral references the regulatory guidance rather than re-stating the guidance in the referral. Lastly, the revisions to the referral make clear that the Working Group stands ready to assist the Market Conduct Examination Guidelines (D) Working Group in revising the *Market Regulation Handbook*.

Birny Birnbaum (Center for Economic Justice—CEJ) asked how the Working Group envisioned state insurance regulators and insurers using the regulatory guidance. Van Buren said she saw this guidance as a starting point for state insurance regulators to reference in fulfilling their duties to regulate these new technologies. Van Buren said that the guidance is not overly detailed but will provide helpful guidance to all state insurance regulators, even those with limited exposure to these technologies, to be able to review an AU program under the parameters laid out in the regulatory guidance document. Birnbaum said that the NAIC has been working on AU for at least eight years and that it seems like a long time to reach a starting point. Birnbaum asked what “law or guidelines governing the proposed use of data elements” reference in *Strategies for Review*, specifically where it states that a department of insurance (DOI) may “Review a life insurer’s underwriting programs/guidelines to confirm the proper use of data elements.” Van Buren said the specifics will always be a matter of state law. Gillaspey agreed with Van Buren and explained that, additionally, the *Strategies for Review* reference relies on the regulatory factors listed under the previous heading, *Regulatory Considerations*. Gillaspey also said the educational paper developed by the Working Group (Appendix 1 to the June 3 draft *Regulatory Guidance and Considerations* document) contains context that informs the regulatory guidance and considerations.

Birnbaum asked whether the proper use of data elements includes the avoidance of proxy discrimination as set out in the “NAIC Principles on Artificial Intelligence (AI)” (AI Principles). Gillaspey explained that the regulatory guidance references other NAIC work products, all of which make clear that current insurance laws continue to apply to AI and AU, including laws prohibiting unfair discrimination in rating and underwriting practices. Birnbaum asked whether a state with a law prohibiting discrimination in life insurance underwriting on the basis of race should follow the June 3 draft *Regulatory Guidance and Considerations* document review insurers’ use of AU for proxy discrimination on the basis of race. Commissioner Houdek said every state prohibits unfair discrimination, and the June 3 draft of the *Regulatory Guidance and Considerations* document has been drafted to allow states the discretion to review insurers’ use of AU in light of their state laws.

Birnbaum asked whether the referral to the Market Conduct Examination Guidelines (D) Working Group would include developing procedures for testing whether an insurer’s use of AU violates the prohibition on unfair discrimination on the basis of race. Commissioner Houdek said he anticipates working with the Market Conduct Examination Guidelines (D) Working Group to determine what is appropriate. Commissioner Houdek said Birnbaum was welcome to submit additional comments and questions during the comment period. Birnbaum said he has put forth these questions and recommendations in the past and is wondering why the guidance is not more specific.

The Working Group agreed to expose the June 3 draft *Regulatory Guidance and Considerations* document and referral for a public comment period ending June 30. Comments should be sent via email to Jennifer Cook ([jcook@naic.org](mailto:jcook@naic.org)).

Having no further business, the Accelerated Underwriting (A) Working Group adjourned.

Draft: 4/8/24

Accelerated Underwriting (A) Working Group  
Virtual Meeting  
April 3, 2024

The Accelerated Underwriting (A) Working Group of the Life Insurance and Annuities (A) Committee met April 3, 2024. The following Working Group members participated: Nathan Houdek, Chair, and Lauren Van Buren (WI); Grace Arnold, Vice Chair, represented by Sarah Gillaspey (MN); Jason Lapham (CO); Russ Gibson (IA); Cynthia Amann (MO); Maggie Reinert and Megan VanAusdall (NE); Daniel Bradford (OH); and David Hippen (WA).

1. Discussed Next Steps for Accelerated Underwriting Guidance Document and Referral

Commissioner Houdek explained that the focus of the Working Group meeting is to discuss the next steps for finalizing the regulatory guidance document and the *Market Regulation Handbook* referral now that the *NAIC Model Bulletin on the Use of Algorithms, Predictive Models, and Artificial Intelligence Systems by Insurers* (AI Model Bulletin) is finalized and the survey on the use of artificial intelligence (AI)/machine learning (ML) in life insurance is complete. He suggested a process for completing the regulatory guidance and referral in time for consideration by the Life Insurance and Annuities (A) Committee at the Summer National Meeting.

Commissioner Houdek said that the first step in the work plan is to have a small drafting group meet to revise both draft documents based on the comments received last year, as well as the AI Model Bulletin and the results of the AI/ML survey. He said revised drafts would be exposed via email for a 30-day public comment period. Ideally, the exposure will occur around the third week of April, with a comment deadline during the third week of May. Commissioner Houdek said the Working Group would have an open meeting to review and discuss any comments received, and the drafting group would meet again to revise accordingly. Another draft would be exposed for a final comment period ending around the second week of July. He said the Working Group would have another open virtual meeting to discuss what he hopes will be minor comments and adopt the final drafts for consideration by the Life Insurance and Annuities (A) Committee during the Summer National Meeting.

Commissioner Houdek explained that while the drafting group will develop the revised drafts, the entire Working Group will be given an opportunity to review each draft prior to its public exposure. He also explained that the drafting group will be regulator-only; however, the Working Group is committed to reviewing and discussing comments on each draft during open meetings. He said the goal is to facilitate full understanding by all stakeholders—state insurance regulators and interested parties—and ensure an opportunity for input throughout the drafting process.

Commissioner Houdek said Van Buren and Gillaspey will participate in the drafting group. He requested that any other state insurance regulators interested in participating in the drafting group email Jennifer Cook (NAIC). He asked that any state insurance regulators also involved in the Market Conduct Examination Guidelines (D) Working Group and willing to review the referral document reach out to Cook.

Amann asked about the intended audience for the regulatory guidance document. She asked if the guidance document is intended to address the needs of state insurance regulators, insurers, or both. She said this was an issue that arose during the drafting of the AI Model Bulletin. Van Buren explained that the resource guide, as drafted, is intended as a tool for state insurance regulators. Commissioner Houdek encouraged state insurance regulators to participate in the drafting group. He said the current draft is consistent with the principles-based approach of the AI Model Bulletin and should not require too much effort to revise.



Having no further business, the Accelerated Underwriting (A) Working Group adjourned.

SharePoint/NAIC Support Staff Hub/Member Meetings/A Cmte /AUWG/AUWG min 4-3-24 final

**Adopted by the Life Insurance and Annuities (A) Committee on August 14, 2024**  
**Adopted by the Accelerated Underwriting (A) Working Group on August 6, 2024**

### **Accelerated Underwriting in Life Insurance Regulatory Guidance and Considerations**

The Accelerated Underwriting (A) Working Group offers the following regulatory guidance for state Departments of Insurance (DOIs) to use when reviewing life insurer's use of accelerated underwriting programs. The regulatory guidance is designed to provide a framework for regulators to reference and is divided into three areas of focus: A) regulatory considerations; B) strategies for review; and C) requests for information.

Regulators should ensure that accelerated underwriting programs are fair, transparent, safe, and secure and in compliance with existing law. Making sure that the use of accelerated underwriting is fair to consumers is important because its use impacts the availability, access, and affordability of life insurance to consumers. Ensuring that insurers use accelerated underwriting in a transparent manner is important because consumers should understand what personal data is being accessed by insurers and how that data is being used. Insurers accessing sensitive consumer data have a duty to secure that data to protect consumers from the harm of unauthorized disclosure. And finally, it is critical that insurers' use of accelerated underwriting is in compliance with all applicable insurance laws and regulations.

A "Background" section has been included starting on page 5 to explain the history of the development of this regulatory guidance. A chronological list of the work product from other NAIC groups addressing similar or overlapping issues related to accelerated underwriting also has been included. While this entire body of work at the NAIC has influenced this guidance document, in the interest of clarity in this rapidly evolving area, this guidance document includes specific references to the definitions from other work product on which the regulatory guidance relies.

## Regulatory Guidance

### A) Regulatory Considerations

The AUWG developed the following regulatory factors for DOIs to consider when reviewing a life insurer's use of Accelerated Underwriting<sup>1</sup> programs:

1. Data inputs are transparent, accurate, reliable, and the data itself is evaluated for potential unfair discrimination.
2. External data sources, Algorithms<sup>2</sup> or Predictive Models<sup>3</sup> are based on sound actuarial principles, including a rational explanation why a rating variable or combination of variables is correlated to expected loss or expense, and why that correlation is consistent with the expected direction of the relationship.<sup>4</sup>
3. Predictive Models or Machine Learning<sup>5</sup> Algorithm(s) within Accelerated Underwriting accurately assess and price risk.
4. Predictive Models or Machine Learning Algorithm(s) achieve an outcome that is not unfairly discriminatory.
5. Reason(s) for an Adverse Underwriting Decision,<sup>6</sup> along with information upon which the insurer based its Adverse Underwriting Decision, are provided to the consumer in language understandable by the typical consumer and consistent with applicable state and federal laws and regulations.
6. The insurer establishes and follows written procedures to protect the consumer's privacy and the consumer's data and provides a description of these procedures consistent with applicable state and federal laws and regulations to the consumer at the time of authorization.
7. The insurer has a mechanism in place to correct mistakes confirmed by records if found in consumer data.
8. The insurer has a process in place to assist a consumer in contacting the originator of a record that the consumer believes to be incorrect.

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<sup>1</sup> For purposes of this Regulatory Guidance, "Accelerated Underwriting" has the meaning set forth in the Life and Annuity Market Conduct Annual Statement (MCAS). See page 6 below "From 2022."

<sup>2</sup> For purposes of this Regulatory Guidance, "Algorithm" has the meaning set forth in the AI Model Bulletin (See Appendix 4).

<sup>3</sup> For purposes of this Regulatory Guidance, "Predictive Model" has the meaning set forth in the AI Model Bulletin (See Appendix 4).

<sup>4</sup> For clarity and consistency, this bullet borrows language from the Casualty Actuarial and Statistical (C) Task Force *Regulatory Review of Predictive Models White Paper* to describe this concept, replacing the language from the Accelerated Underwriting Educational Paper recommendation, which said: "External data sources, algorithms or predictive models are based on sound actuarial principles, including a valid explanation or rationale for any claimed correlation or causal connection."

<sup>5</sup> For purposes of this Regulatory Guidance, "Machine Learning" has the meaning set forth in the AI Model Bulletin (See Appendix 4).

<sup>6</sup> For purposes of this Regulatory Guidance, "Adverse Underwriting Decision" has the meaning articulated in the most recent draft of Model #674, which came from [Model #670](#) and is consistent with the Fair Credit Reporting Act.

8. The insurer will produce information upon request as part of regular filing submission reviews or market conduct examinations or actions.
9. The insurer has procedures in place to address consumer notice requirements and use/restrictions on consumer data, consistent with applicable state and federal laws and regulations.

### **B) Strategies for Review**

Using the regulatory considerations in A. above as a baseline for review, DOIs may consider the following:

1. Review a life insurer's underwriting programs/guidelines to confirm the proper use of data elements.
2. Request a life insurer provide Accelerated Underwriting data sources, Predictive Models, and Algorithms or summaries for analysis.
3. Request a life insurer provide additional information about how a particular Predictive Model or Machine Learning Algorithm is used in an Accelerated Underwriting program.
4. Request a life insurer provide information about source data used as part of its Accelerated Underwriting programs regardless of whether the data or score is provided by a third party or via a model.
5. Request a life insurer provide information about its auditing of data sets, Predictive Models, and Machine Learning Algorithms to ensure they are accurate, reliable, and do not result in unfairly discriminatory outcomes.

### **C) Requests for Information**

The following are examples of questions and requests for information DOIs may want to submit to life insurers when reviewing Accelerated Underwriting programs:

1. What specific external data or information about life insurance applicants is being utilized by the Accelerated Underwriting program?
2. How does the company obtain any external data or information used as part of its life insurance Accelerated Underwriting program?
3. Explain and document in detail how the company discloses to applicants for life insurance what external information is used in its Accelerated Underwriting program and how this external information actually is used in the Accelerated Underwriting program.
4. Ask for a copy of all company disclosures provided to applicants regarding the company's Accelerated Underwriting program.
5. What process or recourse does the company provide to an applicant for life insurance should they receive an Adverse Underwriting decision based on external data or information?
6. What process or recourse does the company provide to applicants for life insurance to correct mistakes in the external data or information?

7. How is external data or information about life applicants utilized, stored after the completion of the underwriting process, and ultimately destroyed?
8. How does the company validate, test, and/or audit data sets, Predictive Models, and Machine Learning Algorithms for accuracy and reliability, and for potential Adverse Consumer Outcomes<sup>7</sup>?
9. Does the company validate, test, and/or audit data sets, Predictive Models, and Machine Learning Algorithms internally or does it utilize a third-party to perform these functions?
10. How does the company ensure that the model(s) it uses are based on sound actuarial principles?
11. How does the company address potential unfair discrimination by ensuring that external consumer data's correlation to risk is not outweighed by any correlation to a protected class(es).

The AUWG offers this guidance to the state DOIs for consideration, while recognizing that there is more work to come. The AUWG anticipates that the work of the other NAIC groups on this topic will lead to additional guidance regarding Accelerated Underwriting in life insurance.

### **Background**

The Accelerated Underwriting Working Group (AUWG) was created by the Life Insurance and Annuities (A) Committee at the NAIC 2019 Summer National Meeting. One of the original charges given to the Working Group was to "... consider the use of external data and data analytics in accelerated life underwriting . . . and, if appropriate, drafting guidance for the states." The Working Group has been considering the effects of accelerated underwriting in life insurance since 2019, and during that time the definitions of artificial intelligence and accelerated underwriting and their use in life insurance has evolved.

A significant portion of the early work of the AUWG benefitted from a multitude of presentations from the life insurance industry, actuarial consulting firms, a machine learning assurance company, and consumer advocate groups. These presentations are summarized in an educational paper (Appendix 1) adopted by the Life Insurance and Annuities (A) Committee at the NAIC 2022 Spring National Meeting.

The educational paper includes recommendations for insurers and regulators designed to ensure new technologies are utilized by life insurers in ways that comply with existing insurance law. While existing insurance laws vary from state to state, the recommendations acknowledge that most states: 1) require life insurance underwriting to be based on expected losses and expenses; 2) require insurers that collect consumer data to maintain that data in secure systems; and 3) prohibit unfair discrimination in insurance underwriting.

The AUWG presents regulatory guidance for State Departments of Insurance (DOIs) when reviewing Accelerated Underwriting programs used by life insurers. The regulatory guidance expounds on the recommendations the AUWG made in its educational paper and provides sample questions and areas for review for DOIs.

Also, the AUWG is making a referral (Appendix 2) to the Market Conduct Examination Guidelines (D) Working Group of the Market Regulation and Consumer Affairs (D) Committee with suggested additions to the NAIC's

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<sup>7</sup> For purposes of this Regulatory Guidance, "Adverse Consumer Outcomes" has the meaning set forth in the Model AI Bulletin (See Appendix 4).

*Market Regulation Handbook* (MRH). The AUWG has concluded that it would be beneficial to include additional guidance in the NAIC's MRH that addresses questions involving Accelerated Underwriting in life insurance.

There are other NAIC groups working on similar or overlapping issues related to Accelerated Underwriting. The AUWG has considered and incorporated relevant content from the following:

From 2020:

- ***The National Association of Insurance Commissioners (NAIC) Principles on Artificial Intelligence (AI)***

On August 14, 2020, the NAIC membership adopted the *NAIC Principles on AI* (AI Principles) (Appendix 3). These AI Principles apply to insurance companies and all persons or entities facilitating the business of insurance that play an active role in the AI system life cycle, including third parties such as rating, data providers and advisory organizations (AI actors). The purpose of the principles is to inform and establish general expectations for AI actors and systems, emphasizing the importance of developing AI systems that are fair and ethical, accountable, compliant with insurance laws and regulations, transparent, and safe, secure, and robust. Both the educational paper and this regulatory guidance and referral rely on the expectations articulated in the AI Principles.<sup>8</sup>

From 2021:

- ***The Casualty Actuarial and Statistical Task Force Regulatory Review of Predictive Models White Paper:***

The NAIC adopted the Casualty Actuarial and Statistical Task Force of Property and Casualty I Committee's *Regulatory Review of Predictive Models White Paper (Regulatory Review White Paper)* on April 14, 2021. The *Regulatory Review White Paper* was issued to help bring more consistency to the art of reviewing predictive models within property/casualty rate filings and make the review process more efficient.

From 2022:

- ***The Market Conduct Annual Statement (MCAS) definition of Accelerated Underwriting***

The Market Conduct Annual Statement (MCAS) (D) Working Group under Market Regulation and Consumer Affairs (D) Committee is the national forum for states to define and revise the Market Conduct Annual Statement (MCAS) data elements and definitions. In 2022, the MCAS Working Group adopted additions to the Life and Annuity MCAS to collect basic information about products subject to Accelerated Underwriting, as well as the types of data the company uses in its Accelerated Underwriting. The MCAS includes the following:

For this MCAS, data should be reported as Accelerated Underwriting when artificial intelligence and/or machine learning which utilizes, in whole or in part, Other Non-medical Third-party Data and/or FCRA Compliant Non-medical Third-party Data in the underwriting of life insurance is applied; including when that data is used in combination with Application Data or Medical Data.

The AUWG believes that the MCAS definition is consistent with the more detailed definition of Accelerated Underwriting that informed the educational paper.<sup>9</sup> Given that the AUWG regulatory guidance is contemplated

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<sup>8</sup> The AUWG relied on the NAIC's AI Principles for the recommendations contained in its educational paper and believes that these AI Principles, coupled with the NAIC model references listed in the MRH Section F. Underwriting and Rating of Chapter 20—General Examination Standards, and Section F. Underwriting and Rating of Chapter 23—Conducting the Life and Annuity Examination, form the basis for additional examination review criteria that focus on Accelerated Underwriting in life insurance.

<sup>9</sup> AUWG's educational paper adopted the following definition: "Accelerated underwriting (AU) is the use of big data, artificial intelligence, and machine learning to underwrite life insurance in an expedited manner. The process generally uses predictive models and machine learning algorithms to analyze applicant data, which may include the use of non-traditional, non-medical data, provided either by the applicant directly or obtained through external sources. The process is typically used to replace

for use by insurance departments during market conduct reviews and for inclusion in the MRH, the AUWG uses the MCAS definition for purposes of its regulatory guidance document to avoid any unintended confusion.

From 2023<sup>10</sup>:

- **NAIC Model Bulletin: Use of Artificial Intelligence Systems by Insurers**

On December 4, 2023, the NAIC adopted the *NAIC Model Bulletin: Use of Artificial Intelligence Systems by Insurers* (AI Model Bulletin) (Appendix 4). The bulletin, when issued by a Department of Insurance: 1) reminds insurers that decisions or actions made or supported by AI must comply with all applicable insurance laws and regulations; 2) sets forth expectations as to how insurers will govern the development/acquisition and use of AI technologies and systems; and 3) also advises insurers of the type of information and documentation that the Department may request during an investigation or examination of any insurer regarding its use of AI technologies and systems.

The regulatory guidance follows the AI Model Bulletin. Specifically, the considerations, expectations, and questions about Accelerated Underwriting in life insurance contained in the regulatory guidance follow the expectations articulated in the first sentence of the AI Model Bulletin: “that decisions or actions impacting consumers that are made or supported by advanced analytical and computational technologies, including Artificial Intelligence (AI) Systems (as defined [in the bulletin]), must comply with all applicable insurance laws and regulations.” The defined terms in the AI Model Bulletin also apply to the AUWG regulatory guidance.

### **Big Data and AI (H) Working Group 2023 Life Artificial Intelligence/Machine Learning Survey**

The 2023 Life Artificial Intelligence/Machine Learning Survey (Life AI/ML Survey) was conducted to inform the work of the Big Data and Artificial Intelligence (H) Working Group in support of its charge to:

Research the use of big data and artificial intelligence (AI) in the business of insurance, and evaluate existing regulatory frameworks for overseeing and monitoring their use. Present findings and recommended next steps, if any, to the Innovation and Technology (EX) Task Force, which may include model governance for the use of big data and AI for the insurance industry.

The results of the survey, summarized in a *Nov. 30, 2023 memorandum* (Appendix 5) and in the summary results chart (Appendix 6), confirm the importance of the development of regulatory guidance specific to the use of Accelerated Underwriting in life insurance.

In 2024 and ongoing...

- **Third-Party Data and Models (H) Task Force**

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all or part of traditional underwriting in life insurance and to allow some applicants to have certain medical requirements waived, such as paramedical exams and fluid collection.”

<sup>10</sup> In 2023, Draft Model and Data Questions were developed and exposed for comment by the Big Data and AI (H) Working Group to help regulators assess whether, to what extent, and in what capacity AI and ML algorithms were used in insurer operations. The Questions are intended to help regulators perform regulatory oversight during an investigation or as related to rate model reviews. The document includes a spreadsheet to gather responses in a structured format. An initial draft was exposed for comment in 2023, however, the project was put on hold to focus efforts on developing the AI Model Bulletin.

In 2024, the Third-Party Data and Models (H) Task Force was formed. The Task Force is charged to:

- A. Develop and propose a framework for the regulatory oversight of third-party data and predictive models.
- B. Monitor and report on state, federal, and international activities related to governmental oversight and regulation of third-party data and model vendors and their products and services. Provide recommendations to the Innovation, Cybersecurity, and Technology (H) Committee regarding responses to such activities.

The goal of this Task Force is to develop and propose an optimal regulatory framework for the regulatory oversight of third-party data and predictive models. The proposed regulatory framework may require new or modification of adopted model laws or regulations in 2025. The Third-Party Data and Models (H) Task Force will coordinate with other Innovation, Cybersecurity, and Technology (H) Committee activities and forums and place emphasis on transparency during the process.

- **Artificial Intelligence Systems Evaluation and Training Collaboration Forum**

The Innovation, Cybersecurity, and Technology (H) Committee established the concept of Collaboration Forums (CFs) as platforms for multiple NAIC groups to work together to identify and address foundational issues and develop a common framework that can inform the various workstreams across the NAIC Committee structure. CFs typically result in a series of events which may include webinars, or in-person components intended to advance an important policy matter.

An emerging CF is the Artificial Intelligence Systems Evaluation and Training Collaboration Forum, which includes several working groups and task force leads coming together for the purpose of developing exam standards for insurers using AI. The CF is also planning to oversee the development of AI training for regulators. The AUWG leadership is involved in this CF and in this role will help ensure that there is consistency around this topic across all lines of insurance.

- **The Privacy Protections (H) Working Group under the Innovation, Cybersecurity and Technology (H) Committee**

The Privacy Protections (H) Working Group is working on replacing the NAIC's Insurance Information and Privacy Protection Model Act (#670) and the Privacy of Consumer Financial and Health Information Regulation (#672) with one new model, *Consumer Privacy Protections Model Law* (#674). Model #674 is intended to address issues confronting state insurance regulators applying current model law and regulation requirements to consumer privacy notifications relative to insurance companies, insurance producers, and their third-party vendors access to consumer data via the internet, telematics, and other data tracking technology used in complex algorithms, including machine learning (ML) and artificial intelligence (AI). Although this group is addressing a unique set of issues, it will require coordination, especially with regard to definitions.

The AUWG supports the NAIC further developing regulatory guidance regarding the use of artificial intelligence in the insurance industry to help DOIs appropriately monitor the use of Accelerated Underwriting programs used by life insurers. As noted above, there is work currently underway which will inform future efforts on this topic.



**DRAFT March 4, 2022**

**Adopted by the Life Insurance and Annuities (A) Committee on April 7, 2022**

**Adopted by Accelerated Underwriting Working Group on March 24, 2022**

Accelerated Underwriting (A) Working Group  
Ad Hoc Drafting Subgroup

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**Appendix A: Additional Procedural Background**

**Appendix B: Machine Learning/ Artificial Intelligence Definition in 6/24/21 Draft Big Data and Artificial Intelligence (EX) Working Group Survey on private passenger automobile (PPA) insurers' use and governance of big data.**

Resources

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National Association of Insurance Commissioners (NAIC) Principles on Artificial Intelligence (AI)  
Casualty Actuarial and Statistical (C) Task Force Regulatory Review of Predictive Models White Paper

## Introduction

In 2019, the National Association of Insurance Commissioners (NAIC) established the Accelerated Underwriting (A) Working Group to consider the use of external data and data analytics in accelerated life insurance underwriting, including consideration of the ongoing work of the Life Actuarial (A) Task Force on the issue and, if appropriate, draft guidance for the states. In addition, the 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. A more detailed procedural background can be found in the appendix. This paper is the output of over a year's work by regulators to understand the current state of the industry and its use of accelerated underwriting. It summarizes what the Working Group has learned over the past year, contextualizes that learning and the topic of accelerated underwriting within other NAIC work and standard regulatory product evaluation processes, and makes recommendations for regulators and insurers when evaluating accelerated underwriting.

Accelerated underwriting in life insurance may provide potential benefits to both consumers and insurers, if applied in a fair and non-discriminatory manner. 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 also continue to monitor accelerated underwriting practices as they develop and update, when necessary, relevant laws to adapt to these developing practices to avoid unfair trade practices and 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.

## What is Accelerated Underwriting?

Throughout this paper, we use the term accelerated underwriting in life insurance. For purposes of this paper, we based our work on the following definition:

Accelerated underwriting is the use of big data, artificial intelligence, and machine learning to underwrite life insurance in an expedited manner. The process generally uses predictive models and machine learning algorithms to analyze applicant data, which may include the use of non-traditional, non-medical data, provided either by the applicant directly or obtained through external sources. The process is typically used to replace all or part of traditional underwriting in life insurance and to allow some applications to have certain medical requirements waived, such as paramedical exams and fluid collection.

Predictive models examine data sets for patterns to predict and assign the risk category, e.g., a model developer enters data points (potentially hundreds of thousands), and the model finds patterns and identifies future

predictions of risk and assigns an insured to a risk category.<sup>1</sup> Machine learning algorithms are a process or set of rules executed to solve an equation<sup>2</sup>, e.g., a life insurance underwriter uses a set of rules to place an individual insured in a particular risk category. The ‘learning’ part of machine learning means that those programs change how they process data over time, much as humans change how they process data by learning. Machine learning often falls into two groups: supervised or unsupervised. The difference between the two is whether the program is directed to analyze patterns or is self-automated.

Predictive models or machine learning trains a system to make judgments when exposed to data that is unfamiliar to serve as a substitute for human-centric decision making. These are both subcategories of artificial intelligence, which should not be confused with a static rule-based algorithm.

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. Traditional life insurance underwriting involves, assessing the applicant’s physical health, along with other financial and behavioral elements, then determining whether an applicant is eligible for coverage and the risk class to which that individual belongs. Accelerated underwriting relies both on traditional and non-traditional, non-medical data used within predictive models or machine learning algorithms to perform some of the tasks of an underwriter. The exact parameters of the application of accelerated underwriting vary by insurer.

Presentations made to the Working Group indicated that life insurers use accelerated underwriting in primarily two ways: 1) Accelerated underwriting is used to triage applicants, where unsuccessful applicants are re-routed to traditional underwriting, and successful ones continue through the accelerated underwriting process; or 2) Accelerated underwriting is used to rate applicants based on risk categories.

Most predictive or machine learning algorithms used in life insurance underwriting are in their second or third generation. The COVID-19 pandemic sped up the adoption of accelerated underwriting in the industry as both consumers and insurers looked for options to purchase and write policies that relied more on technology and involved less in-person contact. This has highlighted the need for ongoing monitoring of the machine learning algorithms—both their development and their uses in the marketplace.

Presentations made to the Working Group indicated that adverse underwriting decisions are sometimes reviewed by human underwriters. Companies presenting to the Working Group stated that the accelerated underwriting process is less cumbersome, costs less than traditional underwriting, it expedites the process and requires less

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<sup>1</sup> For a more detailed discussion of predictive models in property and casualty insurance, see the Casualty Actuarial and Statistical (C) Task Force Regulatory Review of Predictive Models White Paper, Adopted by the Property and Casualty Insurance (C) Committee on Dec. 8, 2020.

<sup>2</sup> The Big Data and Artificial Intelligence (EX) Working Group developed a survey to conduct analysis on private passenger automobile (PPA) insurers’ use and governance of big data, as used in an artificial intelligence (AI) and machine learning (ML) system. The survey is being conducted under the examination authority of Connecticut, Illinois, Iowa, Louisiana, Nevada, North Dakota, Pennsylvania, Rhode Island, and Wisconsin. This analysis will help inform the Working Group in completing its long-term goals of developing guidance and recommendations to update the existing regulatory framework for the use of big data and AI, including how to monitor and oversee the industry’s compliance with the NAIC’s AI principles. The survey work may be expanded to other lines of insurance as needed, such as life insurance and homeowners insurance. For the purposes of the survey only, AI/ML is defined as, “an automated process in which a system begins recognizing patterns without being specifically programmed to achieve a pre-determined result.” This is different from a standard algorithm that consists of a process or set of rules executed to solve an equation or problem in a pre-determined fashion, and evolving algorithms are considered a subset of AI/ML.

consumer involvement in the purchase, improves the underwriting experience for consumers, shortens issue times, and increases policy acceptance rates.<sup>3</sup>

### General Discussion of Issues and Recommendations

Life insurers reliance on an increasingly automated underwriting process that uses non-traditional, non-medical data presents new regulatory challenges. Regulators must ensure that the process is **fair, transparent, and secure**. With regard to accelerated underwriting in life insurance, this concern pertains to input data, the predictive model or machine learning algorithm, and the results of the process. One particular challenge is the potential for **unfair discrimination**. Due to the fact accelerated underwriting relies on non-traditional, non-medical data and predictive models or machine learning algorithms, it may lead to unexpected or unfairly discriminatory outcomes even though the input data may not be overtly discriminatory. It is critical to test the conclusions up front, on the back end, as well as, randomly, to ensure the machine learning algorithm does not produce unfairly discriminatory ratings or ones that are not actuarially sound. Testing can also be important in determining if a machine learning algorithm is accurate across demographic categories. 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. Although medical data has a scientific linkage with mortality, behavioral data may lead to questionable conclusions without reasonable explanation.

### Recommendations

Consistent with the Artificial Intelligence Principles approved by the NAIC in 2020<sup>4</sup>, 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.

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.
- 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.
- Ensure that the predictive models or machine learning algorithm within accelerated underwriting has an intended outcome and that outcome is being achieved.
- Ensure that the predictive models or machine learning algorithm achieve an outcome that is not unfairly discriminatory.

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<sup>3</sup> Presentations to Accelerated Underwriting (A) Working Group between Dec. 8, 2018, and Sept. 24, 2020.

<sup>4</sup> See National Association of Insurance Commissioners (NAIC) Principles on Artificial Intelligence (AI) – Fair and Ethical a. AI actors should respect the rule of law throughout the AI life cycle. This includes, but is not limited to, insurance laws and regulations, such as those relating to trade practices, unfair discrimination, access to insurance, underwriting, privacy, consumer protection and eligibility practices, rate making standards, advertising decisions, claims practices, and solvency. b. Consistent with the risk-based foundation of insurance, AI actors should proactively engage in responsible stewardship of trustworthy AI in pursuit of beneficial outcomes for consumers and to avoid proxy discrimination against protected classes. AI systems should not be designed to harm or deceive people and should be implemented in a manner that avoids harmful or unintended consequences and corrects and remediates for such consequences when they occur.

- Be able to provide the reason(s) for an adverse underwriting decision, whether the decision is based on data subject to FCRA or not, to the consumer and all information upon which the insurer based its adverse underwriting decision.
- Take steps to protect consumer privacy and ensure consumer data is secure.
- Have a mechanism in place to correct mistakes if found.
- Produce information upon request as part of regular filing submissions reviews or market conduct examinations.

### Input data

Predictive models or machine learning algorithms within the accelerated underwriting process rely heavily on data and multiple variables. Examples of the variables used by some accelerated underwriting models include customer disclosures, prescription history, digital health records, credit attributes, medical information bureau data, public records, motor vehicle reports, smartphone apps, consumer activity wearables, claim acceleration tools, individual consumer risk development systems, purchasing history, behavior learned through cell phone usage, and social media. Because accelerated underwriting relies on predictive models or machine learning algorithms that use non-traditional, non-medical data, it may lead to unexpected or unfairly discriminatory outcomes, even though the input data may be facially neutral.

### Traditional Data

Traditional data used in life insurance underwriting includes data collected through a traditional underwriting process. This data may include the following:

- Application data, e.g., medical records, prescription questions, vocation questions, financial profile
- Tele-interview
- Medical records
- Data from the MIB (formerly known as Medical Information Bureau) <sup>5</sup>
- Data from Motor Vehicle Records
- Prescription drug history
- Public records, e.g., criminal records, bankruptcy records, civil litigation, etc.
- Paramedical or medical exam, including EKG's in some instances
- Fluids, e.g., blood, urine, swab/saliva test to determine tobacco usage
- Financial and tax information

### Considerations for use of Traditional Data

- Traditional data has a long and established history in the life insurance industry. Carriers, producers, and consumers are generally familiar with the process.
- Traditional data has a history of usage by insurance carriers. Trained underwriters and producers have years of experience and often understand the process well.
- The relationship of the traditional data elements to the risk is well established and consumers generally understand how most of the elements impact their risk classification or premium charged.

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<sup>5</sup> This data is subject to the Fair Credit Reporting Act (FCRA). ©

- 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.
- Presentations made to the Working Group represented that time and costs associated with obtaining and reviewing traditional data are significant.

### Non-traditional Data

Non-traditional data used in life insurance underwriting may include the following:

- Public records, e.g., assessor data, genealogy records, court filings, voter information
- Property/casualty data from adjacent carrier(s)
- Marketing and social data, e.g., shopping habits, mortgage amount/lender, occupation and education, and social media, etc.
- Professional licenses
- Biometric data, e.g., voice analysis, facial analysis, and other analytics based on personal physical features and characteristics
- Wearable devices

Considerations for use of Non-traditional Data

- Per Actuarial Standard of Practice (ASOP) No. 12, an actuary needs to demonstrate that a relationship between a risk characteristic and an expected outcome exists. This standard applies for any data used, traditional or non-traditional. Consumers may not generally understand how non-traditional data elements impact their risk classification or premium charged.
- As additional rating factors are introduced via insurance scores or with specific data elements, disparate impact across and between demographic groups may be introduced or amplified.
- Non-traditional data may not have the same consumer protections as FCRA and traditional data. For example:
  - There may not be a clear path for consumers to know how data affected their application and how inaccurate data may be corrected.
  - The type and purpose of data accessed are not required to be disclosed to the consumer.
  - There may be privacy concerns about the extent of the use of non-traditional data.

### FCRA Data

Some data<sup>7</sup> used in traditional and accelerated underwriting is subject to the federal Fair Credit Reporting Act (FCRA), which protects the privacy of consumer report information. If an insurer uses data subject to FCRA in its underwriting, applicants:

- (1) Have a right to be told if this information is used to deny insurance or take other adverse action<sup>8</sup>,
- (2) Have the ability to request the data a consumer reporting agency is providing to an insurer, and
- (3) Have the right to ask a consumer reporting agency to correct any errors in the data.

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<sup>7</sup> FCRA applies to consumer reports. Please see 15 U.S. Code § 1681a(d).

<sup>8</sup> FCRA defines adverse action, in part, as “a denial or cancellation of an increase in any charge for, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of, any insurance, existing or applied for, in connection with the underwriting of insurance[.]” 15 U.S. Code § 1681a(k).

Considerations for use of data subject to FCRA:

- FCRA data is readily available.
- FCRA data is updated regularly.
- FCRA data is already used in life and property/casualty lines of business.
- There is existing regulation and oversight by the Federal Trade Commission (FTC) and Consumer Financial Protection Bureau (CFPB).
- Not all FCRA data is useful/ relevant to life insurance underwriting.
- If there is a dispute about the accuracy of FCRA data, a consumer has to obtain additional information and formally dispute these findings.
- FCRA data is extensive and accessing such data may result in access to non-usable credit attributes. In other words, significantly more data may be collected than is needed to determine risk.
- As additional rating factors are introduced via insurance scores or with specific data elements, unfair discrimination, including disparate impact, may be introduced or amplified.

### Recommendations

Existing regulations apply to accelerated underwriting programs in the same way as traditional underwriting programs. State Departments of Insurance (DOIs) have broad regulatory authority to make inquiries into the processes and procedures of life insurers in order to investigate potential unfair trade practices. Complaints about underwriting practices are opportunities for DOIs to review a life insurer's use of accelerated underwriting and data collection methods. Additional DOI actions may include market conduct and on-site examinations as appropriate under existing authority.

Specifically, examiners may:

- Review the life insurer's underwriting practices and underwriting guidelines during an examination or upon initial submission of the policy rates and forms and confirm the proper use of the data elements.
- Request that explanation provided to the consumer for any negative action taken by the life insurer adequately informs the consumer as to why a particular action was taken without the consumer having to make additional inquiries.
- Request information about source data regardless of whether the data or score is provided by a third party.

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 requiring the filing of models used to analyze data.
- Consider questioning 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.

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.

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.

### Data Privacy

Data privacy—a consumer’s ability to retain control over what data can be shared about them and with whom—is not a concern unique to accelerated underwriting in life insurance. Protecting consumer privacy is an issue across all lines of insurance and is the subject of the NAIC Privacy Protections (D) Working Group, formed in 2019 under the parent committee of Market Regulation and Consumer Affairs (D) Committee.

The Working Group’s charge is to review the state insurance privacy protections regarding the collection, use, and disclosure of information gathered in connection with insurance transactions, and make recommended changes, as needed, to certain NAIC models and other existing federal or state statutes.<sup>9</sup>

The primary focus of the Working Group is on the six consumer data privacy rights or types of consumer data privacy protections identified in the NAIC’s Member adopted *Strategy for Consumer Data Privacy Protections* policy statement. The secondary focus is on issues such as notice requirements and standards, disclosure of information collected, disclosure of shared information, requirements to disclose sources of information, requirements to disclose business purposes, and a requirement to disclose third party involvement. The current assignments for the Working Group are intended to create a framework for the policy statement: defining the parameters of these consumer rights by offering suggested definitions, examples of consumer risks, and what may not be protected in federal laws or not covered under NAIC Model laws.

The Privacy Protections Working Group’s policy statement will address the following consumer privacy rights:<sup>10</sup>

- 1) Right to opt-out of data sharing
- 2) Right to opt-in of data sharing
- 3) Right to correct information
- 4) Right to delete information
- 5) Right to data portability

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<sup>9</sup> The Working Group has focused its reviews on the Insurance Information and Privacy Protection Model Act #670, and the Privacy of Consumer Financial and Health Information Regulation Model Act #672 – both drafted in response to the enactment of GLBA, and #668 – the Insurance Data Security Model Act, enacted in 2019/20. With a great deal of research assistance from NAIC Legal Staff, the Working Group prepared a gap analysis – upon which it continues to work. The Working Group is also reviewing the consumer data privacy protections other than those already in these models, such as the numerous provisions contained in federal acts such as the Fair Credit Reporting Act {FCRA}, the Gramm-Leach Bliley Act {GLBA}, the Health Insurance Portability and Affordability Act {HIPAA}, Electronic Health Records {EHR}, etc. The Working Group is also analyzing the various provisions of recently enacted legislation, such as California’s Consumer Privacy Act {CCPA} and its Consumer Data Privacy Regulation {CCPR}, Virginia’s and Colorado’s recently enacted Consumer Privacy Protection laws, certain provisions of the European General Data Protection Regulation {GDPR}, the NAIC’s Record Retention Model Regulation and the NAIC’s Unfair Claims Practice Model Act {UCPA}. There are a lot of jurisdictional issues that remain to be sorted through.

<sup>10</sup> For purposes of the Working Group’s paper, the use of the term “right” should be read as a basic protection, or, denoting access to making a request and not as a guarantee of having the requested right acted upon in the manner as the consumer requests.



6) Right to restrict the use of data<sup>11</sup>

The Accelerated Underwriting (A) Working Group will continue to watch the work of this group. If at any point issues unique to accelerated underwriting arise, we will endeavor to address them in a future work product.

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<sup>11</sup> for purposes of the Working Group's paper there is a distinction between an individual's data and information that results from the use of this data, *e.g.*, the insurance score that results from the use of an algorithm.

## Appendix A: Additional Procedural Background

At the 2019 NAIC Summer National Meeting, the Life Insurance and Annuities (A) Committee discussed a referral it had received from the Big Data (EX) Working Group. The Big Data Working Group had discussed the use of predictive models in accelerated underwriting in life insurance, instead of medical examinations and the collection of fluids. The Big Data Working Group agreed that the issue would be most appropriately addressed by the life insurance subject matter experts and voted to refer the issue of the use of external data and data analytics in accelerated underwriting in life insurance to the Life Insurance and Annuities (A) Committee (Committee).<sup>12</sup>

The Committee discussed the referral and acknowledged that there are a multitude of issues surrounding insurers' use of data models and data analytics; issues that extend into many areas of insurance and overlap with the work of several groups at the NAIC. In addition to the Big Data (EX) Working Group, there is the Innovation and Technology (EX) Task Force, the Artificial Intelligence (EX) Working Group, the Casualty Actuarial and Statistical (C) Task Force, and the Privacy Protections (D) Working Group. The Life Actuarial Task Force was also looking at the use of accelerated underwriting in life insurance from an actuarial perspective, including looking at any potential impact on insurer solvency.

The Committee agreed that an effort to delve into accelerated underwriting in life insurance would need to be narrowly focused while taking into account the work of these other NAIC groups touching on the same topic.

Robert Muriel (IL) chaired the Working Group and Grace Arnold (MN) was the vice-chair. The following were Working Group members: Jason Lapham (CO); Russ Gibson (IA); Rich Piazza (LA); Cynthia Amann (MO); Rhonda Ahrens and Laura Arp (NE); Ross Hartley and Chris Aufenthie (ND); Lori Barron (OH); Elizabeth Kelleher Dwyer (RI); Lichiou Lee (WA); Mark Afable (WI). In January 2021, Commissioner Afable became chair of the Working Group and the rest of the membership remained the same.

The Working Group met for the first time on Oct 2, 2019, and developed a work plan to accomplish its charge. The work plan contemplated the Accelerated Underwriting (A) Working Group progressing through three phases with the goal of completing its charge by the 2020 Fall National Meeting. The first phase was focused on information-gathering. The second phase focused on identifying the issues and deciding on a work product, with the final phase devoted to drafting.

During the information gathering phase, the Working Group heard 15 presentations from varying stakeholders, including an academic (Professor Patrick Brocket<sup>13</sup>), insurance companies, consulting firms (Deloitte and Milliman), a consumer advocate (Birny Birnbaum—CEJ), the American Academy of Actuaries, lawyers from 2 Illinois law firms (Foley & Lardner and Edelson), a machine learning assurance company (Monitaur), and a data analytics company (Verisk). Several of the presentations were held in regulator-only meetings when requested by presenters in order to share proprietary and confidential company-specific information.

Regulators from the Working Group volunteered to participate in two ad hoc groups to tackle the second and third phases of its work plan: There was an ad hoc NAIC liaison group to ensure awareness of and coordination with any work, including guidelines or protocols, developed by other NAIC groups, past and present, that related to the Working Group. There was also an ad hoc drafting group that agreed to take the information gathered, identify issues, recommend and draft a work product for review and approval by the Working Group.

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<sup>12</sup> See NAIC Proceedings – Spring 2019, Innovation and Technology (EX) Task Force, Attachment Two.

<sup>13</sup> Gus Wortham Chair in Risk Management and Insurance at the University of Texas at Austin and Editor, North American Actuarial Journal.

In November 2020, the ad hoc drafting group shared with the Accelerated Underwriting (A) Working Group a proposed draft outline for an educational report exploring accelerated underwriting in life insurance to provide guidance to regulators, industry, and consumer advocates, and other stakeholders. In February 2021, the ad hoc groups merged.

**Appendix B: Machine Learning/ Artificial Intelligence Definition in 6/24/21 Draft Big Data and Artificial Intelligence (EX) Working Group Survey on private passenger automobile (PPA) insurers' use and governance of big data.**

**Artificial Intelligence/Machine Learning (AI/ML)**

AI/ML describes an automated process in which a system begins recognizing patterns without being specifically programmed to achieve a pre-determined result. This is different from a standard algorithm in that an algorithm is a process or set of rules executed to solve an equation or problem in a pre-determined fashion. Evolving algorithms are considered a subset of AI/ML.

**Artificial Intelligence / Machine Learning Systems include:**

- Systems that adapt and adjust to new data and experience without manual human intervention.
- Systems that arrive at results for which the outcomes and the stepwise approach toward the outcomes were not configured in advance by a human programmer.
- Systems that dynamically respond to conditions in the external environment without the specific nature of such responses being known in advance to the designers of the systems.
- Systems that utilize neural networks and/or deep-learning algorithms, such as supervised, semi-supervised, and unsupervised learning algorithms.
- Systems that engage in automatic speech recognition, facial recognition, image recognition, text recognition, natural language processing, generation of customer-specific recommendations, automated customer communications (e.g., chatbots with non-preprogrammed prompts), autonomous or semi-autonomous vehicle operation or data gathering, or any other approach that does not require either preprogramming or a manual human intervention in every instance of an action or decision.
- Systems that automatically generate adaptive responses based on interactions with a consumer or third party.
- Systems that determine which data elements to rely upon, in a non-preprogrammed fashion, among a variety of possible alternatives.

**Artificial Intelligence / Machine Learning Systems are not:**

- Static “scorecards” that deterministically map consumer or other risk characteristics to treatments or decisions. (However, an AI/ML system may use the output of such static “scorecards” as input data for the AI/ML system to consider.)
- Systems with solely preprogrammed decision rules (e.g., “If A, then B” applied invariably in all situations).
- Tables of point or factor assignments in rating plans.
- Static rate making and/or predictive modeling methodologies, including linear regression, generalized linear modeling (GLM), or generalized additive modeling (GAM). Purely informational static databases, such as databases used to obtain reference amounts for claim settlements, or static databases pertaining to consumer characteristics or experience, regardless of the

amount of information in the database. However, if AI/ML is used to create a static predictive model, that AI/ML system is considered within the scope of this survey.

- Deterministic “phone trees” that navigate consumers through pre-recorded voice prompts.
- Any approach that an insurer could have realistically utilized in the year 2000 or prior.

#### **AI/ML Use Descriptions and/or Explanations**

- **Underwriting: AI/ML Uses**
  - Automated Approval: Approving an application without human intervention on that particular application.
  - Automated Denial: Denying an application without human intervention on that particular application.
  - Underwriting Tier Determination: Decisions regarding the criteria to use to establish specific named or numbered categories (called tiers) which utilize combinations of attributes that affect an insurer’s underwriting decision.
  - Company Placement: Decisions regarding which of several affiliated companies within an insurance group will accept an individual risk.
  - Input into Non-Automated Approval Decision: Providing data, analysis, or recommendations regarding a decision to approve an application in a situation where a human decision-maker still has the ability and responsibility to affirmatively consider this information and make a decision independently of the AI/ML system. In this situation, the AI/ML system cannot automatically approve the application, and protocols exist that ensure that each recommendation from the AI/ML system is actively reviewed and not adopted by default.
  - Input into Non-Automated Denial Decision: Providing data, analysis, or recommendations regarding a decision to deny an application in a situation where a human decision-maker still has the ability and responsibility to affirmatively consider this information and make a decision independently of the AI/ML system. In this situation, the AI/ML system cannot automatically deny the application, and protocols exist that ensure that each recommendation from the AI/ML system is actively reviewed and not adopted by default.
  - Automate Processing Thru the Agency Channel: Enabling agencies to receive certain information about applicants automatically without specifically requesting that information and/or to provide quotes to the applicants and/or recommend a decision regarding the application to the agent without being based on preprogrammed decision rules.

Adopted by the Life Insurance and Annuities (A) Committee on August 14, 2024  
Adopted by the Accelerated Underwriting (A) Working Group on August 6, 2024

### MEMORANDUM

TO: **Market Conduct Examination Guidelines (D) Working Group** of the Market Regulation and Consumer Affairs (D) Committee

FROM: Accelerated Underwriting (A) Working Group of the Life Insurance and Annuities (A) Committee

DATE:

RE: Suggested additions to the NAIC's *Market Regulation Handbook* addressing accelerated underwriting in life insurance

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The Accelerated Underwriting Working Group (AUWG) was created by the Life Insurance and Annuities (A) Committee at the NAIC 2019 Summer National Meeting to "... consider the use of external data and data analytics in accelerated life underwriting, including consideration of the ongoing work of the Life Actuarial (A) Task Force on the issue and, if appropriate, drafting guidance for the states." The AUWG drafted an educational paper that was adopted by the Life Insurance and Annuities (A) Committee on April 7, 2022. During this same time frame, various groups at the NAIC continued to work on related issues and develop work product.<sup>1</sup> Notably, on December 4, 2023, the NAIC adopted the *NAIC Model Bulletin: Use of Artificial Intelligence Systems by Insurers* (AI Model Bulletin). The AUWG also continued its work drafting the *Accelerated Underwriting in Life Insurance Regulatory Guidance* (Regulatory Guidance) for the states reviewing life insurers' use of accelerated underwriting. This Regulatory Guidance was adopted by the AUWG on [insert date] and by the Life Insurance and Annuities (A) Committee on [insert date].

In developing the Regulatory Guidance, the AUWG realized that additional guidance addressing accelerated underwriting in life insurance in the NAIC's *Market Regulation Handbook* (MRH) would provide examiners with critical tools to use when looking at the underwriting activities of life insurers. Specific guidance pertaining to accelerated underwriting in the MRH is necessary to alert the market conduct examiner to the novel data and processes utilized by life insurers in accelerated underwriting.

Existing laws and regulations apply to accelerated underwriting programs in the same way as traditional underwriting programs. DOIs have broad authority to examine the processes and procedures of life insurers to determine if their accelerated underwriting programs comply with the statutes and regulations of the department. The AI Model Bulletin also advises insurers of the type of information and documentation that insurance departments may request under existing regulatory authority during an investigation or examination regarding its use of AI Systems, which includes accelerated underwriting in life insurance. In particular, the state equivalent to the following NAIC Models provide legislative authority for specific inquiry into insurer practices involving AI Systems, including accelerated underwriting in life insurance:

*Unfair Trade Practices Act* (#880) defines practices that constitute unfair methods of competition or unfair or deceptive acts and practices and prohibits the trade practices so defined or determined.

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<sup>1</sup> See list of related work product in the Background section of the *Accelerated Underwriting in Life Insurance Regulatory Guidance* document.

*Unfair Claims Settlement Practices Model Act (#900)* sets forth standards for the investigation and disposition of claims arising under policies or certificates of insurance.

*Corporate Governance Annual Disclosure Model Act (#305)*: requires insurers to report on governance practices and to provide a summary of the Insurer's corporate governance structure, policies, and practices. The content, form, and filing requirements for a Corporate Governance Annual Disclosure (CGAD) are set forth in the Corporate Governance Annual Disclosure Model Regulation (#306)

The AUWG recommends that the Market Conduct Examination Guidelines (D) Working Group utilize the Regulatory Guidance to update the MRH. The Regulatory Guidance is designed to provide a framework for regulators to reference when reviewing insurers' use of accelerated underwriting and is divided into three areas of focus: A) regulatory considerations; B) strategies for review; and C) requests for information. Section C, in particular, contains questions that could be incorporated into the MRH. The AUWG looks forward to working with and will be available to assist the Market Conduct Examination Guidelines (D) Working Group in drafting the recommended changes to the MRH.

*Adopted by the Executive (EX) Committee and Plenary, Aug. 14, 2020*

*Adopted by the Executive (EX) Committee, Aug. 13, 2020*

*Adopted by the Innovation and Technology (EX) Task Force, Aug. 7, 2020*

## National Association of Insurance Commissioners (NAIC) Principles on Artificial Intelligence (AI)

**RECOMMENDS** that insurance companies and all persons or entities facilitating the business of insurance that play an active role in the AI system life cycle, including third parties such as rating, data providers and advisory organizations (hereafter referred to as “AI actors”) promote, consider, monitor and uphold the following principles according to their respective roles; and

**THIS DOCUMENT** is intended to establish consistent high-level guiding principles for AI actors. These principles are guidance and do not carry the weight of law or impose any legal liability. This guidance can serve to inform and establish general expectations for AI actors and systems emphasizing the importance of accountability, compliance, transparency, and safe, secure, fair and robust outputs.

Further, **THIS DOCUMENT**

Should be used to assist regulators and NAIC committees addressing insurance-specific AI applications. The level of regulatory oversight may vary based on the risk and impact to the consumer. These principles should be interpreted and applied in a manner that accommodates the nature and pace of change in the use of AI by the insurance industry and promotes innovation, while protecting the consumer.

### Fair and Ethical

- a. AI actors should respect the rule of law throughout the AI life cycle. This includes, but is not limited to, insurance laws and regulations, such as those relating to trade practices, unfair discrimination, access to insurance, underwriting, privacy, consumer protection and eligibility practices, ratemaking standards, advertising decisions, claims practices, and solvency.
- b. Consistent with the risk-based foundation of insurance, AI actors should proactively engage in responsible stewardship of trustworthy AI in pursuit of beneficial outcomes for consumers and to avoid proxy discrimination against protected classes. AI systems should not be designed to harm or deceive people and should be implemented in a manner that avoids harmful or unintended consequences and corrects and remediates for such consequences when they occur.

### Accountable

- a. AI actors should be accountable for ensuring that AI systems operate in compliance with these principles consistent with the actors' roles, within the appropriate context and evolving technologies. Any AI system should be compliant with legal requirements governing its use of data and algorithms during its phase of the insurance life cycle. Data supporting the final outcome of an AI application should be retained and be able to be produced in accordance with applicable insurance laws and regulations in each jurisdiction. AI actors should be responsible for the creation, implementation and impacts of any AI system, even if the impacts are unintended. AI actors should implement mechanisms and safeguards consistent with the degree and nature of the risks posed by AI to ensure all applicable laws and regulations are followed, including ongoing (human or otherwise) monitoring and, when appropriate, human intervention.

### Compliant

- a. AI actors must have the knowledge and resources in place to comply with all applicable insurance laws and regulations. AI actors must recognize that insurance is primarily regulated by the individual states and territories of the United States as well as by the federal government, and that AI systems must comply with the insurance laws and regulations within each individual jurisdiction. Compliance is required whether the violation is intentional or unintentional. Compliance with legal requirements is an ongoing process. Thus, any AI system that is deployed must be consistent with applicable laws and safeguards against outcomes that are either unfairly discriminatory or otherwise violate legal standards, including privacy and data security laws and regulations.

### Transparent

- a. For the purpose of improving the public's confidence in AI, AI actors should commit to transparency and responsible disclosures regarding AI systems to relevant stakeholders. AI actors must have the ability to protect confidentiality of proprietary algorithms, provided adherence to individual state law and regulations in all states where AI is deployed can be demonstrated. These proactive disclosures include revealing the kind of data being used, the purpose of the data in the AI system and consequences for all stakeholders.
- b. Consistent with applicable laws and regulations, stakeholders (which includes regulators and consumers) should have a way to inquire about, review and seek recourse for AI-driven insurance decisions. This information should be easy-to-understand and describe the factors that lead to the prediction, recommendation or decision. This information may be presented differently and should be appropriate for applicable stakeholders.



### Secure, Safe and Robust

- a. AI systems should be robust, secure and safe throughout the entire life cycle so that in conditions of normal or reasonably foreseeable use, or adverse conditions, they can function in compliance with applicable laws and regulations. To this end, AI actors should ensure a reasonable level of traceability in relation to datasets, processes and decisions made during the AI system life cycle. AI actors should enable analysis of the AI system's outcomes, responses and other insurance-related inquiries, as appropriate in keeping with applicable industry best practices and legal requirements.
- b. AI actors should, based on their roles, the situational context and their ability to act, apply a systematic risk management approach to each phase of the AI system life cycle on a continuous basis to address risks related to AI systems, including privacy, digital security and unfair discrimination as defined by applicable laws and regulations.

W:\National Meetings\2020\Summer\Plenary\AI principles as Adopted by the TF\_0807.docx

Draft: 12/2/2023

Adopted by Executive (EX) Committee and Plenary, December 4, 2023

Adopted by the Innovation, Cybersecurity, and Technology (H) Committee, December 1, 2023

**NAIC MODEL BULLETIN:**

**USE OF ARTIFICIAL INTELLIGENCE SYSTEMS BY INSURERS**

TO: All Insurers Licensed to Do Business In (*Insert Name of Jurisdiction*) (“Insurers”)

FROM: [Department/Commissioner]

DATE: [Insert]

RE: The Use of Artificial Intelligence Systems in Insurance

This bulletin is issued by the [] (Department) to remind all Insurers that hold certificates of authority to do business in the state that decisions or actions impacting consumers that are made or supported by advanced analytical and computational technologies, including Artificial Intelligence (AI) Systems (as defined below), must comply with all applicable insurance laws and regulations. This includes those laws that address unfair trade practices and unfair discrimination. This bulletin sets forth the Department’s expectations as to how Insurers will govern the development/acquisition and use of certain AI technologies, including the AI Systems described herein. This bulletin also advises Insurers of the type of information and documentation that the Department may request during an investigation or examination of any Insurer regarding its use of such technologies and AI Systems.

**SECTION 1: INTRODUCTION, BACKGROUND, AND LEGISLATIVE AUTHORITY**

**Background**

AI is transforming the insurance industry. AI techniques are deployed across all stages of the insurance life cycle, including product development, marketing, sales and distribution, underwriting and pricing, policy servicing, claim management, and fraud detection.

AI may facilitate the development of innovative products, improve consumer interface and service, simplify and automate processes, and promote efficiency and accuracy. However, AI, including AI Systems, can present unique risks to consumers, including the potential for inaccuracy, unfair discrimination, data vulnerability, and lack of transparency and explainability. Insurers should take actions to minimize these risks.

The Department encourages the development and use of innovation and AI Systems that contribute to safe and stable insurance markets. However, the Department expects that decisions made and actions taken by Insurers using AI Systems will comply with all applicable federal and state laws and regulations.

The Department recognizes the *Principles of Artificial Intelligence* that the NAIC adopted in 2020 as an appropriate source of guidance for Insurers as they develop and use AI systems. Those principles emphasize the importance of the fairness and ethical use of AI; accountability; compliance with state laws and regulations; transparency; and a safe, secure, fair, and robust system. These fundamental principles should guide Insurers in their development and use of AI Systems and underlie the expectations set forth in this bulletin.

## Legislative Authority

The regulatory expectations and oversight considerations set forth in Section 3 and Section 4 of this bulletin rely on the following laws and regulations:

- **Unfair Trade Practices Model Act (#880)**: The *Unfair Trade Practices Act* [*insert citation to state statute or regulation corresponding to Model #880*] (UTPA), regulates trade practices in insurance by: 1) defining practices that constitute unfair methods of competition or unfair or deceptive acts and practices; and 2) prohibiting the trade practices so defined or determined.
- **Unfair Claims Settlement Practices Model Act (#900)**: The *Unfair Claims Settlement Practices Act*, [*insert citation to state statute or regulation corresponding to Model #900*] (UCSPA), sets forth standards for the investigation and disposition of claims arising under policies or certificates of insurance issued to residents of [*insert state*].

Actions taken by Insurers in the state must not violate the UTPA or the UCSPA, regardless of the methods the Insurer used to determine or support its actions. As discussed below, Insurers are expected to adopt practices, including governance frameworks and risk management protocols, that are designed to ensure that the use of AI Systems does not result in: 1) unfair trade practices, as defined in []; or 2) unfair claims settlement practices, as defined in [].

- **Corporate Governance Annual Disclosure Model Act (#305)**: The *Corporate Governance Annual Disclosure Act* [*insert citation to state statute or regulation corresponding to Model #305*] (CGAD), requires Insurers to report on governance practices and to provide a summary of the Insurer's corporate governance structure, policies, and practices. The content, form, and filing requirements for CGAD information are set forth in the *Corporate Governance Annual Disclosure Model Regulation* (#306) [*insert citation to state statute or regulation corresponding to Model #306*] (CGAD-R).

The requirements of CGAD and CGAD-R apply to elements of the Insurer's corporate governance framework that address the Insurer's use of AI Systems to support actions and decisions that impact consumers.

- **Property and Casualty Model Rating Law (#1780)**: The *Property and Casualty Model Rating Law*, [*insert citation to state statute or regulation corresponding to the Model #1780*], requires that property/casualty (P/C) insurance rates not be excessive, inadequate, or unfairly discriminatory.

The requirements of [] apply regardless of the methodology that the Insurer used to develop rates, rating rules, and rating plans subject to those provisions. That means that an Insurer is responsible for assuring that rates, rating rules, and rating plans that are developed using AI techniques and Predictive Models that rely on data and Machine Learning do not result in excessive, inadequate, or unfairly discriminatory insurance rates with respect to all forms of casualty insurance—including fidelity, surety, and guaranty bond—and to all forms of property insurance—including fire, marine, and inland marine insurance, and any combination of any of the foregoing.

- **Market Conduct Surveillance Model Law (#693)**: The *Market Conduct Surveillance Model Law* [*insert citation to state statute or regulation corresponding to Model #693*] establishes the framework pursuant to which the Department conducts market conduct actions. These are comprised of the full range of activities that the Department may initiate to assess and address the market practices of Insurers, beginning with market analysis and extending to targeted examinations. Market conduct actions are separate from, but may result from, individual complaints made by consumers asserting illegal practices by Insurers.

An Insurer's conduct in the state, including its use of AI Systems to make or support actions and decisions that impact consumers, is subject to investigation, including market conduct actions. Section 4 of this bulletin provides guidance on the kinds of information and documents that the Department may request in the context of an AI-focused investigation, including a market conduct action.

## SECTION 2: DEFINITIONS

For the purposes of this bulletin the following terms are defined<sup>1</sup>:

**"Adverse Consumer Outcome"** refers to a decision by an Insurer that is subject to insurance regulatory standards enforced by the Department that adversely impacts the consumer in a manner that violates those standards.

**"Algorithm"** means a clearly specified mathematical process for computation; a set of rules that, if followed, will give a prescribed result.

**"AI System"** is a machine-based system that can, for a given set of objectives, generate outputs such as predictions, recommendations, content (such as text, images, videos, or sounds), or other output influencing decisions made in real or virtual environments. AI Systems are designed to operate with varying levels of autonomy.

**"Artificial Intelligence (AI)"** refers to a branch of computer science that uses data processing systems that perform functions normally associated with human intelligence, such as reasoning, learning, and self-improvement, or the capability of a device to perform functions that are normally associated with human intelligence such as reasoning, learning, and self-improvement. This definition considers machine learning to be a subset of artificial intelligence.

**"Degree of Potential Harm to Consumers"** refers to the severity of adverse economic impact that a consumer might experience as a result of an Adverse Consumer Outcome.

**"Generative Artificial Intelligence (Generative AI)"** refers to a class of AI Systems that generate content in the form of data, text, images, sounds, or video, that is similar to, but not a direct copy of, pre-existing data or content.

**"Machine Learning (ML)"** Refers to a field within artificial intelligence that focuses on the ability of computers to learn from provided data without being explicitly programmed.

**"Model Drift"** refers to the decay of a model's performance over time arising from underlying changes such as the definitions, distributions, and/or statistical properties between the data used to train the model and the data on which it is deployed.

**"Predictive Model"** refers to the mining of historic data using algorithms and/or machine learning to identify patterns and predict outcomes that can be used to make or support the making of decisions.

**"Third Party"** for purposes of this bulletin means an organization other than the Insurer that provides services, data, or other resources related to AI.

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<sup>1</sup> Drafting note: Individual states may have adopted definitions for terms that are included in the model bulletin that may be different from the definitions set forth herein.

### **SECTION 3: REGULATORY GUIDANCE AND EXPECTATIONS**

Decisions subject to regulatory oversight that are made by Insurers using AI Systems must comply with the legal and regulatory standards that apply to those decisions, including unfair trade practice laws. These standards require, at a minimum, that decisions made by Insurers are not inaccurate, arbitrary, capricious, or unfairly discriminatory. Compliance with these standards is required regardless of the tools and methods Insurers use to make such decisions. However, because, in the absence of proper controls, AI has the potential to increase the risk of inaccurate, arbitrary, capricious, or unfairly discriminatory outcomes for consumers, it is important that Insurers adopt and implement controls specifically related to their use of AI that are designed to mitigate the risk of Adverse Consumer Outcomes.

Consistent therewith, all Insurers authorized to do business in this state are expected to develop, implement, and maintain a written program (an “AIS Program”) for the responsible use of AI Systems that make, or support decisions related to regulated insurance practices. The AIS Program should be designed to mitigate the risk of Adverse Consumer Outcomes, including, at a minimum, the statutory provisions set forth in Section 1 of this bulletin.

The Department recognizes that robust governance, risk management controls, and internal audit functions play a core role in mitigating the risk that decisions driven by AI Systems will violate unfair trade practice laws and other applicable existing legal standards. The Department also encourages the development and use of verification and testing methods to identify errors and bias in Predictive Models and AI Systems, as well as the potential for unfair discrimination in the decisions and outcomes resulting from the use of Predictive Models and AI Systems.

The controls and processes that an Insurer adopts and implements as part of its AIS Program should be reflective of, and commensurate with, the Insurer’s own assessment of the degree and nature of risk posed to consumers by the AI Systems that it uses, considering: (i) the nature of the decisions being made, informed, or supported using the AI System; (ii) the type and Degree of Potential Harm to Consumers resulting from the use of AI Systems; (iii) the extent to which humans are involved in the final decision-making process; (iv) the transparency and explainability of outcomes to the impacted consumer; and (v) the extent and scope of the insurer’s use or reliance on data, Predictive Models, and AI Systems from third parties. Similarly, controls and processes should be commensurate with both the risk of Adverse Consumer Outcomes and the Degree of Potential Harm to Consumers.

As discussed in Section 4, the decisions made as a result of an Insurer’s use of AI Systems are subject to the Department’s examination to determine that the reliance on AI Systems are compliant with all applicable existing legal standards governing the conduct of the Insurer.

#### **AIS Program Guidelines**

##### **1.0 General Guidelines**

1.1 The AIS Program should be designed to mitigate the risk that the Insurer’s use of an AI System will result in Adverse Consumer Outcomes.

1.2 The AIS Program should address governance, risk management controls, and internal audit functions.

1.3 The AIS Program should vest responsibility for the development, implementation, monitoring, and oversight of the AIS Program and for setting the Insurer's strategy for AI Systems with senior management accountable to the board or an appropriate committee of the board.

1.4 The AIS Program should be tailored to and proportionate with the Insurer's use and reliance on AI and AI Systems. Controls and procedures should be focused on the mitigation of Adverse Consumer Outcomes and the scope of the controls and procedures applicable to a given AI System use case should reflect and align with the Degree of Potential Harm to Consumers with respect to that use case.

1.5 The AIS Program may be independent of or part of the Insurer's existing Enterprise Risk Management (ERM) program. The AIS Program may adopt, incorporate, or rely upon, in whole or in part, a framework or standards developed by an official third-party standard organization, such as the National Institute of Standards and Technology (NIST) Artificial Intelligence Risk Management Framework, Version 1.0.

1.6 The AIS Program should address the use of AI Systems across the insurance life cycle, including areas such as product development and design, marketing, use, underwriting, rating and pricing, case management, claim administration and payment, and fraud detection.

1.7 The AIS Program should address all phases of an AI System's life cycle, including design, development, validation, implementation (both systems and business), use, on-going monitoring, updating and retirement.

1.8 The AIS Program should address the AI Systems used with respect to regulated insurance practices whether developed by the Insurer or a third-party vendor.

1.9 The AIS Program should include processes and procedures providing notice to impacted consumers that AI Systems are in use and provide access to appropriate levels of information based on the phase of the insurance life cycle in which the AI Systems are being used.

## **2.0 Governance**

The AIS Program should include a governance framework for the oversight of AI Systems used by the Insurer. Governance should prioritize transparency, fairness, and accountability in the design and implementation of the AI Systems, recognizing that proprietary and trade secret information must be protected. An Insurer may consider adopting new internal governance structures or rely on the Insurer's existing governance structures; however, in developing its governance framework, the Insurer should consider addressing the following items:

2.1 The policies, processes, and procedures, including risk management and internal controls, to be followed at each stage of an AI System life cycle, from proposed development to retirement.

2.2 The requirements adopted by the Insurer to document compliance with the AIS Program policies, processes, procedures, and standards. Documentation requirements should be developed with Section 4 in mind.

2.3 The Insurer's internal AI System governance accountability structure, such as:

- a) The formation of centralized, federated, or otherwise constituted committees comprised of representatives from appropriate disciplines and units within the Insurer, such as business units, product specialists, actuarial, data science and analytics, underwriting, claims, compliance, and legal.

- b) Scope of responsibility and authority, chains of command, and decisional hierarchies.
- c) The independence of decision-makers and lines of defense at successive stages of the AI System life cycle.
- d) Monitoring, auditing, escalation, and reporting protocols and requirements.
- e) Development and implementation of ongoing training and supervision of personnel.

2.4 Specifically with respect to Predictive Models: the Insurer's processes and procedures for designing, developing, verifying, deploying, using, updating, and monitoring Predictive Models, including a description of methods used to detect and address errors, performance issues, outliers, or unfair discrimination in the insurance practices resulting from the use of the Predictive Model.

### **3.0 Risk Management and Internal Controls**

The AIS Program should document the Insurer's risk identification, mitigation, and management framework and internal controls for AI Systems generally and at each stage of the AI System life cycle. Risk management and internal controls should address the following items:

3.1 The oversight and approval process for the development, adoption, or acquisition of AI Systems, as well as the identification of constraints and controls on automation and design to align and balance function with risk.

3.2 Data practices and accountability procedures, including data currency, lineage, quality, integrity, bias analysis and minimization, and suitability.

3.3 Management and oversight of Predictive Models (including algorithms used therein), including:

- a) Inventories and descriptions of the Predictive Models.
- b) Detailed documentation of the development and use of the Predictive Models.
- c) Assessments such as interpretability, repeatability, robustness, regular tuning, reproducibility, traceability, model drift, and the auditability of these measurements where appropriate.

3.4 Validating, testing, and retesting as necessary to assess the generalization of AI System outputs upon implementation, including the suitability of the data used to develop, train, validate and audit the model. Validation can take the form of comparing model performance on unseen data available at the time of model development to the performance observed on data post-implementation, measuring performance against expert review, or other methods.

3.5 The protection of non-public information, particularly consumer information, including unauthorized access to the Predictive Models themselves.

3.6 Data and record retention.

3.7 Specifically with respect to Predictive Models: a narrative description of the model's intended goals and objectives and how the model is developed and validated to ensure that the AI Systems that rely on such models correctly and efficiently predict or implement those goals and objectives.

#### **4.0 Third-Party AI Systems and Data**

Each AIS Program should address the Insurer's process for acquiring, using, or relying on (i) third-party data to develop AI Systems; and (ii) AI Systems developed by a third party, which may include, as appropriate, the establishment of standards, policies, procedures, and protocols relating to the following considerations:

4.1 Due diligence and the methods employed by the Insurer to assess the third party and its data or AI Systems acquired from the third party to ensure that decisions made or supported from such AI Systems that could lead to Adverse Consumer Outcomes will meet the legal standards imposed on the Insurer itself.

4.2 Where appropriate and available, the inclusion of terms in contracts with third parties that:

- a) Provide audit rights and/or entitle the Insurer to receive audit reports by qualified auditing entities.
- b) Require the third party to cooperate with the Insurer with regard to regulatory inquiries and investigations related to the Insurer's use of the third-party's product or services.

4.3 The performance of contractual rights regarding audits and/or other activities to confirm the third-party's compliance with contractual and, where applicable, regulatory requirements.

### **SECTION 4: REGULATORY OVERSIGHT AND EXAMINATION CONSIDERATIONS**

The Department's regulatory oversight of Insurers includes oversight of an Insurer's conduct in the state, including its use of AI Systems to make or support decisions that impact consumers. Regardless of the existence or scope of a written AIS Program, in the context of an investigation or market conduct action, an Insurer can expect to be asked about its development, deployment, and use of AI Systems, or any specific Predictive Model, AI System or application and its outcomes (including Adverse Consumer Outcomes) from the use of those AI Systems, as well as any other information or documentation deemed relevant by the Department.

Insurers should expect those inquiries to include (but not be limited to) the Insurer's governance framework, risk management, and internal controls (including the considerations identified in Section 3). In addition to conducting a review of any of the items listed in this Bulletin, a regulator may also ask questions regarding any specific model, AI System, or its application, including requests for the following types of information and/or documentation:

#### **1. Information and Documentation Relating to AI System Governance, Risk Management, and Use Protocols**

1.1. Information and documentation related to or evidencing the Insurer's AIS Program, including:

- a) The written AIS Program.
- b) Information and documentation relating to or evidencing the adoption of the AIS Program.



- c) The scope of the Insurer's AIS Program, including any AI Systems and technologies not included in or addressed by the AIS Program.
- d) How the AIS Program is tailored to and proportionate with the Insurer's use and reliance on AI Systems, the risk of Adverse Consumer Outcomes, and the Degree of Potential Harm to Consumers.
- e) The policies, procedures, guidance, training materials, and other information relating to the adoption, implementation, maintenance, monitoring, and oversight of the Insurer's AIS Program, including:
  - i. Processes and procedures for the development, adoption, or acquisition of AI Systems, such as:
    - (1) Identification of constraints and controls on automation and design.
    - (2) Data governance and controls, any practices related to data lineage, quality, integrity, bias analysis and minimization, suitability, and Data Currency.
  - ii. Processes and procedures related to the management and oversight of Predictive Models, including measurements, standards, or thresholds adopted or used by the Insurer in the development, validation, and oversight of models and AI Systems.
  - iii. Protection of non-public information, particularly consumer information, including unauthorized access to Predictive Models themselves.

1.2. Information and documentation relating to the Insurer's pre-acquisition/pre-use diligence, monitoring, oversight, and auditing of data or AI Systems developed by a third party.

1.3. Information and documentation relating to or evidencing the Insurer's implementation and compliance with its AIS Program, including documents relating to the Insurer's monitoring and audit activities respecting compliance, such as:

- a) Documentation relating to or evidencing the formation and ongoing operation of the Insurer's coordinating bodies for the development, use, and oversight of AI Systems.
- b) Documentation related to data practices and accountability procedures, including data lineage, quality, integrity, bias analysis and minimization, suitability, and Data Currency.
- c) Management and oversight of Predictive Models and AI Systems, including:
  - i. The Insurer's inventories and descriptions of Predictive Models, and AI Systems used by the Insurer to make or support decisions that can result in Adverse Consumer Outcomes.
  - ii. As to any specific Predictive Model or AI System that is the subject of investigation or examination:
    - (1) Documentation of compliance with all applicable AI Program policies, protocols, and procedures in the development, use, and oversight of Predictive Models and AI Systems deployed by the Insurer.

- (2) Information about data used in the development and oversight of the specific model or AI System, including the data source, provenance, data lineage, quality, integrity, bias analysis and minimization, suitability, and Data Currency.
  - (3) Information related to the techniques, measurements, thresholds, and similar controls used by the Insurer.
- d) Documentation related to validation, testing, and auditing, including evaluation of Model Drift to assess the reliability of outputs that influence the decisions made based on Predictive Models. Note that the nature of validation, testing, and auditing should be reflective of the underlying components of the AI System, whether based on Predictive Models or Generative AI.

## 2. Third-Party AI Systems and Data

In addition, if the investigation or examination concerns data, Predictive Models, or AI Systems collected or developed in whole or in part by third parties, the Insurer should also expect the Department to request the following additional types of information and documentation.

- 2.1 Due diligence conducted on third parties and their data, models, or AI Systems.
- 2.2 Contracts with third-party AI System, model, or data vendors, including terms relating to representations, warranties, data security and privacy, data sourcing, intellectual property rights, confidentiality and disclosures, and/or cooperation with regulators.
- 2.3 Audits and/or confirmation processes performed regarding third-party compliance with contractual and, where applicable, regulatory obligations.
- 2.4 Documentation pertaining to validation, testing, and auditing, including evaluation of Model Drift.

The Department recognizes that Insurers may demonstrate their compliance with the laws that regulate their conduct in the state in their use of AI Systems through alternative means, including through practices that differ from those described in this bulletin. The goal of the bulletin is not to prescribe specific practices or to prescribe specific documentation requirements. Rather, the goal is to ensure that Insurers in the state are aware of the Department's expectations as to how AI Systems will be governed and managed and of the kinds of information and documents about an Insurer's AI Systems that the department expects an Insurer to produce when requested.

As in all cases, investigations and market conduct actions may be performed using procedures that vary in nature, extent, and timing in accordance with regulatory judgment. Work performed may include inquiry, examination of company documentation, or any of the continuum of market actions described in the NAIC's *Market Regulation Handbook*. These activities may involve the use of contracted specialists with relevant subject matter expertise. Nothing in this bulletin limits the authority of the Department to conduct any regulatory investigation, examination, or enforcement action relative to any act or omission of any Insurer that the Department is authorized to perform.

APPENDIX 5



MEMORANDUM

To: Superintendent Elizabeth Kelleher Dwyer,  
Chair of the Big Data and Artificial Intelligence (H) Working Group

From: Commissioner Kevin Gaffney, Chair of Workstream One (Surveys) of the Big Data and Artificial Intelligence (H) Working Group

Cc: Fourteen-State Subject Matter Expert Group; Kris DeFrain (NAIC)

Date: November 30, 2023

Re: 2023 Life Artificial Intelligence (AI)/Machine Learning (ML) Survey Analysis

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The 2023 Life Artificial Intelligence/Machine Learning Survey (Life AI/ML Survey) was conducted to inform the work of the Big Data and Artificial Intelligence (H) Working Group in support of its charge to:

*Research the use of big data and artificial intelligence (AI) in the business of insurance, and evaluate existing regulatory frameworks for overseeing and monitoring their use. Present findings and recommended next steps, if any, to the Innovation and Technology (EX) Task Force, which may include model governance for the use of big data and AI for the insurance industry.*

The survey was conducted under the market examination authorities of 14 requesting states (Colorado, Connecticut, Illinois, Iowa, Louisiana, Minnesota, Nebraska, North Dakota, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, and Wisconsin) and completed by insurers who actively write Life insurance in at least one of the participating states and 1) have at least \$250 million in national life insurance premium for 2021, 2) covered at least 10,000 lives by issuing term insurance in 2021, or 3) is an identified InsurTech company. Note this survey is limited to the application of AI/ML in life insurance products only, excluding annuities. The following subject matter experts (SMEs) represented the fourteen states:

CO: Jason Lapham  
CT: Paul Lombardo  
IL: Erica Weyhenmeyer  
IA: Jared Kirby  
LA: Nichole Torblaa  
MN: Fred Andersen  
NE: Director Eric Dunning  
ND: Ross Hartley  
OR: Brian Fjeldheim  
PA: Shannen Logue  
RI: Matt Gendron

VT: Commissioner Kevin Gaffney  
VA: Eric Lowe  
WI: Lauren Van Buren

This memorandum contains the SMEs' summary of the survey analysis, key takeaways, and some recommendations for next steps. The SMEs also approved public distribution of the attached NAIC staff's survey analysis, which provides more detail about the survey results.

## **SURVEY ANALYSIS SUMMARY**

### **Artificial Intelligence/Machine Learning Model Use by Companies**

In contrast to the Private Passenger Auto and Home AI/ML Surveys, this survey intentionally includes Generalized Linear Models (GLMs) and Generalized Additive Models (GAMs) as types of AI models in scope, so the data should be interpreted as applying to insurers' predictive models including these model types. Out of 161 companies<sup>1</sup> completing the survey, 94 companies currently use, plan to use, or plan to explore using AI/machine learning (ML) as defined for this survey. This equates to 58% of reporting companies. For comparison, 88% of the companies responding to the PPA Survey and 70% of the companies responding to the Home Survey reported they currently use, plan to use, or plan to explore using AI/ML (where AI/ML algorithms were defined as *excluding* GLMs and GAMs).

Among the total number of AI/ML models that have been implemented by life insurers responding to this survey, 36% were used for Marketing and 34% were used in Underwriting, while only 18% were used for Pricing and 11% were used for Risk Management.

Of the 67 companies that indicated they had no plans to use or explore the use of AI/ML, the most common reason stated by 48 companies (72%) was "no compelling business reason." The second and third most common reasons stated by 31 companies (46%) each, reported "lack of resources and expertise," and "reliance on legacy systems requiring IT, data, and technology upgrades." Note that these responses are not mutually exclusive as multiple reasons may be applicable.

The following highlights the predominant uses, the levels of decision-making, and how often models are developed in-house or externally by insurer operation.

### **MODELS BY INSURER OPERATION**

#### **Marketing**

Uses: For marketing life insurance products, companies reported currently using AI/ML models mostly for target online advertising (24 companies), followed by provisions of offers to existing customers (21 companies), identification of recipients of mail or phone advertising (19 companies), and identification of potential customer groups (18 companies). Other uses include other marketing-related functions (11 companies), demand modeling (9 companies), and direct online sales (7 companies).

Level of decision-making: A majority of the total AI/ML models reported for Marketing *augmented* human decision-making, however approximately 40% of the AI/ML models used for target online advertising were *automated*, and 60% of the models used for other marketing-related functions were used to *support* human decision-making.

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<sup>1</sup> A total of 179 companies were selected to participate in the survey. Of those, 2 companies submitted incomplete surveys and 16 companies were exempt.

In-house or third-party: While a slight majority (56%) of the models reported for Marketing in total were developed by a third party, 76% of the models used for identification of recipients of mail or phone advertising, and 75% of the models used for provisions of offers to existing customers were developed internally.

Types of models: A wide variety of model types used for Marketing purposes were reported. The two most popular techniques were regression/regularization-based methods (which likely refer to GLMs), and ensemble methods (which combine several, usually machine learning, modeling types to achieve better performance).

### **Pricing and Underwriting**

Uses: In pricing and underwriting, companies reported currently using AI/ML models mostly to reduce time to issue (35 companies), but 29 companies each also reported using models for automated approval/denial decisions and assigning a risk class through underwriting, and 25 companies reported using models for non-automated approval/denial decisions.

Level of decision-making: Almost half (48%) of the AI/ML models in total reported for Pricing and Underwriting uses were *automated*.

In-house or third-party: Models used for Pricing and Underwriting were almost evenly split between developed internally (46%) and by third parties (54%). However, over two thirds of the models (68%) used for non-automated approval/denials were developed by third parties. In contrast, over three quarters (77%) of the models developed for other underwriting-related functions were developed internally.

Types of models: A wide variety of model types used for Pricing and Underwriting were reported. As for Marketing, the two most popular techniques again were regression/regularization-based methods, likely referring to GLMs, and ensemble methods, which combine several, usually machine learning, modeling types to achieve better performance.

### **Risk Management**

As noted above, 11% of the total AI/ML models in production were used for risk management. But because this information was provided by only 7 responding companies, it may be misleading to infer broad conclusions about how AI/ML models are currently being used within the life insurance market, the degree of human involvement in decision-making, the sources of model development, and the types of modeling algorithms used.

### **DATA ELEMENTS BY INSURER OPERATIONS**

To gain a better understanding of the types of data used, insurers were asked whether they included any of the following in their AI/ML models: Credit-Based Insurance Score, Financial Credit Score, Other Types of Non-Credit “Score”, Public Records, Demographics, Telematics Type Data, Driving Behavior, Biometrics, Medical, Online Media, and Other Non-Traditional Data Elements.

Among these specific elements:

- Marketing—Demographics data was used in nearly 40% of the AI/ML models by the responding companies, followed by Online Media data which was used in 17% of the models.
  - Demographics data was about equally split between internal and external sources, while Online Media data was nearly all externally sourced.

- Pricing and Underwriting—a wider variety of data elements were used: Medical data was used in 30% of the models, followed by Demographics data (17%), Driving Behavior data (15%), and Credit-Based Insurance Scores (14%).
  - Medical data, Driving Behavior data, and Credit-Based Insurance Scores were almost always externally sourced, while Demographics data was mainly internally sourced.
- Risk Management—Only 7 companies responded that they used any of these specific data elements in their AI/ML models for risk management. The variables that were indicated being used were: Credit-Based Insurance Score, Public Records, Demographics, Driving Behavior, Medical data, and Other Non-Traditional Data Elements.
  - Nearly all these data elements were externally-sourced.

## **CUSTOMER DATA CORRECTION**

### Non-Fair Credit Reporting Act (Non-FCRA) Data Disclosures to Consumers

Insurers were asked about their processes for informing consumers about data collection—when and how their data is used, *other than what is required by law* under the Fair Credit Reporting Act. By operational use, 37% reported “yes” for the data used for Marketing, 41% of companies reported “yes” for Pricing and Underwriting, and 23% reported “yes” for Risk Management.

### Consumer Opportunity to Challenge or Correct Data

Insurers responded similarly to the question of whether consumers have an opportunity to correct their data that is not included under the FCRA: 34% reported “yes” for the data used for Marketing, 46% of companies reported “yes” for Pricing and Underwriting, and 26% reported “yes” for Risk Management.

## **GOVERNANCE**

The purpose of the model governance questions is to obtain a better understanding of the company’s awareness of specific risk areas tied to selected categories in the NAIC Artificial Intelligence Principles.

Insurers were asked if the following are *documented* in their governance program:

- Fairness and ethics considerations;
- Accountability for data algorithms’ compliance with laws, as well as intended and unintended impacts;
- Appropriate resources and knowledge involved to ensure compliance with laws, including those related to unfair discrimination;
- Ensure transparency with appropriate disclosures, including notice to consumers specific to data being used and methods for appeal and recourse related to inaccurate data; and
- AI systems are secure, safe, and robust, including decision traceability and security and privacy risk protections.

The response rate to these governance questions was extremely low—only three companies provided responses. Of those, two companies answered “yes” that their governance program included the above considerations, while the third company responded “no” to this question.

However, when asked about components documented in Life Insurer Governance Programs, there was a nearly 60% response rate, which was fairly high. Of those responding, 53% reported their governance program includes documented Compliance with Laws and Regulations, 53% have Accountability for Intended or Unintended Impacts, 60% documented the Resources / Knowledge Needed to Ensure Compliance, 62% provide Transparency and Notices to Consumers About Their Data

and Methods for Correction, and 57% reported they document Assurance of Safe, Secure and Robust Systems Including Decision Traceability. 47% of the companies responded they follow guidance from other established standards, such as the Actuarial Standards Board, American Academy of Actuaries, Society of Actuaries, NIST, and others, including the Colorado Division of Insurance and the NAIC.

### **THIRD-PARTY DATA SOURCES AND MODELS**

Insurers identified third-party vendors they use to purchase models and/or data. A very high proportion (94%) of insurers responded that contracts with third parties do not include any conditions that would limit disclosure or otherwise limit transparency to regulators.

Of the 365 total models listed in the survey, 165 (46%) models were developed internally, and 191 (54%) were developed by a third party. There were no models reported developed jointly with a third party. After grouping the similarly-named third parties, there were 59 unique third-party companies listed in the survey who provided the data elements noted in the above Data Elements section that were used in AI/ML models. Marketing has 37 different third parties listed as providing any of these data elements, and Pricing & Underwriting and Risk Management data were each sourced from 15 different third parties. Note that some third-party vendors provided data that were used in more than one insurer operation.

### **CONCLUSION/NEXT STEPS**

The insights gained from the survey will be used to supplement state insurance regulators' knowledge of the current regulatory framework around AI/ML, governance, consumers, and third parties and to evaluate whether any changes should be made to the frameworks.

Following are some potential next steps, including many activities already in progress. This list is not intended to be complete, but it may be helpful as a starting point for discussions and decision-making about what next steps to take at the NAIC:

- Explore Insurer AI/ML model usage and the level of decision-making.
- Evaluate the regulatory framework about the use of third-party models.
- Determine whether additional white papers on best practices would be useful on subjects in the AI/ML space.
- Explore the use of AI/ML at the product level.

Additional information was collected but not documented due to the confidential nature. Regulators may contact Dorothy Andrews, [dandrews@naic.org](mailto:dandrews@naic.org) to seek additional, but non-company identifying information. This report is confidential because data was collected in a market conduct examination of the fourteen states and agreed confidentiality protections were applied.

## Summary Chart of Life Insurance AI/ML Survey Results

AI/ML Usage Status	Co. CNT	Comments on Survey
Currently Using	76	The following is a summary of the company counts for various uses of AI/ML. Not all the questions applied to every company based on screening questions reflected in the survey. To gain a complete understanding of the responses, you may view the full report on the NAIC website at the link <a href="https://content.naic.org/industry/data-call/life">https://content.naic.org/industry/data-call/life</a> .
Planning to Use	8	
Exploring Use	10	
None of the Above	67	
Excluded Companies	18	
<b>Total No. of Companies</b>	<b>179</b>	

### Artificial Intelligence/ Machine Learning Areas of Usage

Pricing Assumptions	Co. CNT	Marketing	Co. CNT	Risk Management	Co. CNT
<b>Pricing</b>		<b>Target Online Advertising</b>		<b>Wearable Devices</b>	
Yes	27	Yes	34	Yes	3
No	23	No	60	No	91
<b>Reduced Time to Issue</b>		<b>ID Mail/Phone Ad Recipients</b>		<b>Wellness Initiatives</b>	
Yes	39	Yes	27	Yes	4
No	11	No	67	No	90
<b>Specialty Programs (i.e. Diabetes)</b>		<b>Offers to Existing Customers</b>		<b>Discount Medical Programs</b>	
Yes	N/A	Yes	24	Yes	0
No	N/A	No	70	No	94
<b>Automated Approval/Denial</b>		<b>ID of Potential Customer Groups</b>		<b>Technology to Detect Smoking</b>	
Yes	35	Yes	26	Yes	2
No	14	No	68	No	93
<b>Non-Automated Approval/Denial</b>		<b>Demand Modeling</b>		<b>Disease Detection</b>	
Yes	27	Yes	13	Yes	2
No	23	No	81	No	92
<b>Underwriting Risk Class</b>		<b>Direct Online Sales</b>		<b>Other Risk Management</b>	
Yes	33	Yes	11	Yes	4
No	17	No	83	No	89
<b>Other Underwriting Function</b>		<b>Other Marketing</b>			
Yes	12	Yes	30		
No	37	No	64		

### Artificial Intelligence/ Machine Learning Governance Issues (Yes/No)

Transparency Limitation Disclosures	Accountability for Unintended Impacts	Accountability for Intended Impacts
Pricing & Underwriting 5/80	Pricing & Underwriting 46/49	Pricing & Underwriting 47/47
Marketing 6/77	Marketing 40/55	Marketing 41/53
Risk Management 3/74	Risk Management 27/67	Risk Management 28/65
<b>Algorithmic Compliance with Laws</b>	<b>Transparency for Consumer Appeals</b>	<b>Safe, Secure, Robust AI Practices</b>
Pricing & Underwriting 47/47	Pricing & Underwriting 56/39	Pricing & Underwriting 49/46



Marketing	42/52	Marketing	39/56	Marketing	44/51
Risk Management	25/68	Risk Management	29/65	Risk Management	26/68

<b>Accountability for Compliance with</b>		<b>Other AI Guidance Followed</b>		<b>Development Source of Guidance*</b>	
Pricing & Underwriting	53/42	Pricing & Underwriting	40/54	Pricing & Underwriting	24/1/17
Marketing	48/47	Marketing	39/55	Marketing	25/2/14
Risk Management	34/00	Risk Management	30/63	Risk Management	19/2/11

<b>NAIC AI Principles - Fair &amp; Ethical</b>		<b>NAIC AI Principles - Accountable</b>		<b>NAIC AI Principles - Compliant</b>	
Pricing & Underwriting	2/1	Pricing & Underwriting	2/1	Pricing & Underwriting	2/1
Marketing	2/1	Marketing	2/1	Marketing	2/1
Risk Management	2/1	Risk Management	2/1	Risk Management	2/1

<b>NAIC AI Principles - Transparent</b>		<b>NAIC AI Principles - Safe/Secure/Robust</b>	
Pricing & Underwriting	2/1	Pricing & Underwriting	2/1
Marketing	2/1	Marketing	2/1
Risk Management	2/1	Risk Management	2/1

*\*The designation represents Internally Developed/Developed by a Third-Party/Developed by Both*

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**Commonly Used Artificial Intelligence/ Machine Learning Third-Party Products & Vendors**

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**Pricing Assumptions**

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CRL  
CURV Scorfe  
Exam One  
Lexis Nexis (incl. MVR)  
Milliman (Medical/Pharmacy)  
Milliman Intelliscript  
Samba Saftey  
State DMV  
TransUnion (Incl. DriverRisk)  
TrueRisk Life Score

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**Marketing**

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IXI AssetMix  
AARP Services  
Adobe  
AGS  
Axiom  
Bing & Googel Ads  
Census (Incl. Religion Census)  
Choregraph  
Data Axle  
EASI  
Epsilon  
Experian  
IXI Wealth Complete  
LinkedIn  
Merkle  
Meta/Facebook  
Neustar  
SAS  
Secuian  
The Trade Desk  
TikTok  
TransUnion

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**Risk Management**

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Equifax  
Experisn  
Lexis Nexis  
TransUnion  
State DMV  
Fitbit  
Garmin  
Google Fit  
MaoMyFitness  
Oura  
Peleton  
Polar  
Samsung  
Strava  
Whoop

Adopted by the Life Insurance and Annuities (A) Committee on August 14, 2024  
Adopted by the Accelerated Underwriting (A) Working Group on August 6, 2024

## MEMORANDUM

TO: **Market Conduct Examination Guidelines (D) Working Group** of the Market Regulation and Consumer Affairs (D) Committee

FROM: Accelerated Underwriting (A) Working Group of the Life Insurance and Annuities (A) Committee

DATE:

RE: Suggested additions to the NAIC's *Market Regulation Handbook* addressing accelerated underwriting in life insurance

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The Accelerated Underwriting Working Group (AUWG) was created by the Life Insurance and Annuities (A) Committee at the NAIC 2019 Summer National Meeting to "... consider the use of external data and data analytics in accelerated life underwriting, including consideration of the ongoing work of the Life Actuarial (A) Task Force on the issue and, if appropriate, drafting guidance for the states." The AUWG drafted an educational paper that was adopted by the Life Insurance and Annuities (A) Committee on April 7, 2022. During this same time frame, various groups at the NAIC continued to work on related issues and develop work product.<sup>1</sup> Notably, on December 4, 2023, the NAIC adopted the *NAIC Model Bulletin: Use of Artificial Intelligence Systems by Insurers* (AI Model Bulletin). The AUWG also continued its work drafting the *Accelerated Underwriting in Life Insurance Regulatory Guidance* (Regulatory Guidance) for the states reviewing life insurers' use of accelerated underwriting. This Regulatory Guidance was adopted by the AUWG on [insert date] and by the Life Insurance and Annuities (A) Committee on [insert date].

In developing the Regulatory Guidance, the AUWG realized that additional guidance addressing accelerated underwriting in life insurance in the NAIC's *Market Regulation Handbook* (MRH) would provide examiners with critical tools to use when looking at the underwriting activities of life insurers. Specific guidance pertaining to accelerated underwriting in the MRH is necessary to alert the market conduct examiner to the novel data and processes utilized by life insurers in accelerated underwriting.

Existing laws and regulations apply to accelerated underwriting programs in the same way as traditional underwriting programs. DOIs have broad authority to examine the processes and procedures of life insurers to determine if their accelerated underwriting programs comply with the statutes and regulations of the department. The AI Model Bulletin also advises insurers of the type of information and documentation that insurance departments may request under existing regulatory authority during an investigation or examination regarding its use of AI Systems, which includes accelerated underwriting in life insurance. In particular, the state equivalent to the following NAIC Models provide legislative authority for specific inquiry into insurer practices involving AI Systems, including accelerated underwriting in life insurance:

*Unfair Trade Practices Act* (#880) defines practices that constitute unfair methods of competition or unfair or deceptive acts and practices and prohibits the trade practices so defined or determined.

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<sup>1</sup> See list of related work product in the Background section of the *Accelerated Underwriting in Life Insurance Regulatory Guidance* document.

*Unfair Claims Settlement Practices Model Act (#900)* sets forth standards for the investigation and disposition of claims arising under policies or certificates of insurance.

*Corporate Governance Annual Disclosure Model Act (#305)*: requires insurers to report on governance practices and to provide a summary of the Insurer's corporate governance structure, policies, and practices. The content, form, and filing requirements for a Corporate Governance Annual Disclosure (CGAD) are set forth in the Corporate Governance Annual Disclosure Model Regulation (#306)

The AUWG recommends that the Market Conduct Examination Guidelines (D) Working Group utilize the Regulatory Guidance to update the MRH. The Regulatory Guidance is designed to provide a framework for regulators to reference when reviewing insurers' use of accelerated underwriting and is divided into three areas of focus: A) regulatory considerations; B) strategies for review; and C) requests for information. Section C, in particular, contains questions that could be incorporated into the MRH. The AUWG looks forward to working with and will be available to assist the Market Conduct Examination Guidelines (D) Working Group in drafting the recommended changes to the MRH.