ROLL CALL

Judith L. French, Chair  Ohio  James J. Donelon  Louisiana
Carter Lawrence, Vice Chair  Tennessee  Barbara D. Richardson  Nevada
Jim L. Ridling  Alabama  Marlene Caride  New Jersey
Peni Itula Sapini Teo  American Samoa  Adrienne A. Harris  New York
Karima M. Woods  District of Columbia  Cassie Brown  Texas
Colin M. Hayashida  Hawaii  Scott A. White  Virginia
Doug Ommen  Iowa  Nathan Houdek  Wisconsin
Vicki Schmidt  Kansas

NAIC Support Staff: Jennifer R. Cook/Jolie H. Matthews

AGENDA

1. Consider Adoption of its 2021 Fall National Meeting Minutes
   —Director Judith L. French (OH)

2. Consider Adoption of the Accelerated Underwriting (A) Working Group Report—Commissioner Grace Arnold (MN)

3. Hear a Federal Update and Discuss the Implications of the U.S. Department of Labor (DOL) Fiduciary Rule—Brooke Stringer (NAIC)

4. Receive an Update from the Annuity Suitability (A) Working Group
   —Commissioner Doug Ommen (IA)

5. Consider Adoption of the Life Actuarial (A) Task Force Report
   —Mike Boerner (TX)

6. Discuss Next Steps for the Life Insurance Online Guide (A) Working Group
   —Director Judith L. French (OH)

7. Receive an Update on the Special (EX) Committee on Race and Insurance Workstream Four—Director Judith L. French (OH)
8. Discuss Any Other Matters Brought Before the Committee  
—Director Judith L. French (OH)

9. Adjournment

SharePoint/NAIC Support Staff Hub/Member Meetings/2022 Spring National Meeting/Agenda/A Cmte
The Life Insurance and Annuities (A) Committee met Dec. 15, 2021. The following Committee members participated: Glen Mulready, Vice Chair (OK); Jim L. Ridling (AL); Karima M. Woods represented by Philip Barlow (DC); Doug Ommen represented by Kim Cross (IA); Dean L. Cameron represented by Randy Pipal (ID); Vicki Schmidt (KS); James J. Donelon represented by Tom Travis (LA); Barbara D. Richardson (NV); Adrienne A. Harris represented by My Chi To (NY); Judith L. French represented by Jana Jarret (OH); Elizabeth Kelleher Dwyer (RI); Carter Lawrence represented by Brian Hoffmeister (TN); and Mark Afable represented by Nathan Houdek and Richard Wicka (WI). Also participating was: Mike Boerner (TX).

1. **Adopted its Summer National Meeting Minutes**
   
   Director French made a motion, seconded by Mr. Travis, to adopt the Committee’s Aug. 16 minutes (see NAIC Proceedings – Summer 2021, Life Insurance and Annuities (A) Committee). The motion passed unanimously.

2. **Adopted the Reports of its Working Group and Task Force**
   
   Director French made a motion, seconded by Mr. Travis, to adopt the following reports: the Accelerated Underwriting (A) Working Group, including its Dec. 6 minutes (Attachment One); and the Life Actuarial (A) Task Force. The motion passed unanimously.

3. **Received a Memorandum from the Life Actuarial (A) Task Force and the Valuation Analysis (E) Working Group on the FSAP Recommendation.**
   
   Commissioner Mulready explained that Mr. Boerner authored a memorandum as chair of the Life Actuarial (A) Task Force and the Valuation Analysis (E) Working Group to the Life Insurance and Annuities (A) Committee following up on a recommendation in the 2020 Financial Sector Assessment Program (FSAP) report regarding actuarial resources. The memorandum explains that having the necessary actuarial support for principle-based reserving (PBR) is important, and to that end the NAIC has added seven actuaries to its staff to help with PBR, mostly just to help PBR work as it was designed. Commissioner Mulready said the memorandum from Mr. Boerner indicates appreciation for the resources provided and states that if more resources are needed, NAIC leadership will be notified. Commissioner Mulready explained that the Committee is receiving this memorandum and is committed to monitoring how things are developing with PBR.

4. **Adopted the Life Actuarial (A) Task Force’s 2022 Proposed Charges**
   
   Mr. Boerner summarized the Life Actuarial Task Force’s 2022 Proposed charges. He explained that the charges are largely unchanged from 2021 and only make necessary extensions to the time frames for completing the charges.

   Birny Birnbaum (Center for Economic Justice—CEJ) commented that he would like to see actuaries move away from having charges addressing consumer-facing issues, like the Indexed Universal Life (IUL) Illustration (A) Subgroup charge to:

   Monitor the results and practices of IUL illustrations following implementation of Actuarial Guideline XLIX-A—The Application of the Life Illustrations Model Regulation to Policies with Index-Based Interest to Policies Sold On or After December 14, 2020 (AG 49-A). Provide recommendations for consideration of changes to Life Insurance Illustrations Model Regulation (#582) to the Life Actuarial (A) Task Force, as needed.

   Mr. Birnbaum said he wrote a comment letter suggesting that the Life Insurance and Annuities (A) Committee adopt a new charge to broadly look at issues involving life insurance illustrations.

   Director French made a motion, seconded by Mr. Travis, to adopt the Life Actuarial (A) Task Force’s 2022 proposed charges. (see NAIC Proceedings – Fall 2021, Executive and Plenary Attachment Four) The motion passed unanimously.

5. **Adopted Revisions to AG 25**
Mr. Boerner said that revisions to *Actuarial Guideline XXV—Calculation of Minimum Reserves and Minimum Nonforfeiture Values for Policies With Guaranteed Increasing Death Benefits Based on an Index* (AG 25) pertain to very specific types of life insurance products, which include pre-need funeral policies and other small dollar policies with guaranteed increasing death benefits tied to a cost of living index. He said the revisions include the removal of the fixed 4% nonforfeiture interest rate floor to align AG 25 with the *Valuation Manual*.

Director French made a motion, seconded by Commissioner Schmidt, to adopt the revisions to AG 25 (see *NAIC Proceedings – Fall 2021, Executive and Plenary Attachment Seven*). The motion passed unanimously.

6. **Adopted the 2022 GRET**

Mr. Boerner explained that the development and adoption of the Generally Recognized Expense Table (GRET) is an annual process to provide expenses that are used by a significant percentage of life insurance companies in their life insurance illustrations pursuant to the *Life Insurance Illustrations Model Regulation* (#582). As in previous years, the Society of Actuaries (SOA) Committee on Life Insurance Company Expenses submitted its GRET analysis to the Life Actuarial (A) Task Force for the upcoming year. The SOA followed the same methodology in developing the 2022 GRET as last year for the 2021 GRET.

Commissioner Schmidt made a motion, seconded by Superintendent Dwyer, to adopt the 2022 GRET (see *NAIC Proceedings – Fall 2021, Executive and Plenary Attachment Six*). The motion passed unanimously.

7. **Adopted its 2022 Proposed Charges**

Commissioner Mulready explained that the 2022 proposed charges of the Life Insurance and Annuities (A) Committee were included in the meeting materials and had been posted on the Committee web page since Nov. 15. He said that the proposed charges are largely unchanged from the 2021 charges and reflect the working groups and their charges that were disbanded during 2021. He said the proposed 2022 charges also include an update to the Annuity Suitability (A) Working Group charge to reflect that the Working Group is continuing its work on a frequently asked questions (FAQ) document.

Commissioner Mulready explained that there were a few issues with the charges for the Committee to discuss. He reminded the Committee that at the Summer National Meeting, it asked Mr. Wicka, chair of the Life Insurance Illustration Issues (A) Working Group, to draft a “chair report” to guide the Committee in discussing the future of the Working Group and its charge. Additionally, Mr. Birnbaum submitted comments on the proposed charges.

Commissioner Mulready said the chair report (Attachment Two) is included in the meeting materials and was posted along with the Committee’s proposed charges on Nov. 15. He explained that the chair report includes an overview of the Life Insurance Illustrations Issues (A) Working Group’s history and progress to date. He said the report also includes the chair’s recommendations that the Committee adopt the “chair report” as the final report of the Working Group and disband the Working Group. The report explains that the chair report will be part of the official record in the *NAIC Proceedings*, making the revisions the Working Group has developed to date available for individual states to consider when exploring the possibility of enacting a summary disclosure requirement.

Commissioner Mulready said that NAIC funded consumer representative Brenda J. Cude (University of Georgia) and Mr. Birnbaum commented on the chair report. Commissioner Mulready explained that Ms. Cude wrote in support of keeping the Working Group and made four points in support of her view: 1) well-crafted disclosures are helpful to consumers, and consumer testing could ensure the policy overview is helpful; 2) states may be laboratories for policy change, but not typically for the development of consumer disclosures like the policy overview; 3) it is not clear that continuing with the Working Group is not supported by a sufficient number of the NAIC members; and 4) the templates are too unfinished to be picked up by the states. There needs to at least be an explanation of the purpose of the templates and drafting notes to indicate where the information should be specific to the policy.

Commissioner Mulready said that Mr. Birnbaum submitted two comment letters—one on the 2022 proposed charges and the other on the chair report. On the 2022 proposed charges, Mr. Birnbaum suggested: 1) creating a new charge to review existing NAIC models that address life insurance illustrations in order to develop consistent content and consumer protection principles throughout; and 2) retaining the substance of the Life Insurance Illustration Issues (A) Working Group, but renaming the group and revising the charge to develop a policy overview document to replace the policy summary in the *Life Insurance Disclosure* model.
Model Regulation (#580). He explained that Mr. Birnbaum’s second letter was addressing the chair report and urged the Committee to retain the revised charge as outlined in his comment letter on the proposed charges.

Ms. To shared New York’s perspective on the recommendation in the chair report. She said the chair report was thoughtful, detailed, and useful. She said New York appreciates the consideration that led to the recommendation in the report to disband the Working Group and delete its charge, but New York is disappointed that such an important consumer protection issue did not generate the level of support necessary to move forward with the policy overview. She said the chair report highlights that specific issues had been identified with the documents used by insurers that hinder consumer understanding of life insurance products, which are complex. She said the report explained that in recognition of these issues, stakeholders coalesced around the idea of a short consumer-friendly overview that summarizes a policy’s key features, but that the same group of stakeholders could not reach consensus on the form of a summary or when it would be presented to consumers.

Ms. To said that New York does not believe that this is a good outcome for consumers. She said consumers should have clear, concise, accurate, and realistic descriptions and illustrations of the complex products they purchase, which is not a controversial position. She said there are obviously different ways of achieving that goal, but New York thinks that a uniform policy overview would have been an important step in the right direction. She mentioned that the chair report invites states to play their role as the laboratories for policy change and experiment with the disclosures and disclosure model. Ms. To said that New York intends to take up that invitation.

Mr. Birnbaum offered some comments in opposition to disbanding the Working Group and its charge. He said that it is critical to understand that illustrations are not only the primary tool used by producers to sell products, but also they determine the structure and complexity of products. He said this is known based on insurer behavior after Actuarial Guideline XLIX-A—The Application of the Life Illustrations Model Regulation to Policies With Index-Based Interest to Policies Sold on or After December 14, 2020 (AG 49) was changed and companies changed their products in order to maintain high accumulation values.

Mr. Birnbaum also questioned the assertion in the report that there was a lack of consensus. He said there was little representation on the Working Group in terms of the number of states. He said he cannot understand why there was a lack of consensus on the issue of providing consumers with a buyer’s guide and a better summary overview for shopping prior to purchase. He said the issue that seems to stymie consensus is that consumers should not get information necessary to make a purchase decision prior to the purchase.

He also said the assertion that the states could take the work product developed so far, when it is unadopted and opposed by industry, does not make sense. He said unfinished Working Group products is not a recipe for uniform and consistent high-level consumer protection across the states. He said it is a recipe for disparate treatment across the states. He said that with leadership and support from the Committee, the policy overview could be completed expeditiously.

Commissioner Mulready mentioned that the Life Insurance Online Guide (A) Working Group does not have a chair. He said that if this continues to be a priority for the Committee, there needs to be a chair, or possibly co-chairs, and he asked for volunteers. He suggested perhaps Jennifer Cook (NAIC) could put together some information regarding the Working Group that might be helpful in recruiting a new chair.

Ms. Cross made a motion, seconded by Commissioner Schmidt, to revise the 2022 proposed charges as recommended in the chair report by adopting the chair report as the final work product of the Life Insurance Illustration Issues (A) Working Group and disbanding the Working Group and its charge (see NAIC Proceedings – Fall 2021, Executive and Plenary Attachment Four). The motion passed, with Mr. Barlow voting no.

Having no further business, the Life Insurance and Annuities (A) Committee adjourned.
Virtual Meeting
(in lieu of meeting at the 2022 Spring National Meeting)

ACCELERATED UNDERWRITING (A) WORKING GROUP
Thursday, March 24, 2022
11:00 a.m. – 12:00 p.m. ET / 10:00 – 11:00 a.m. CT / 9:00 – 10:00 a.m. MT / 8:00 – 9:00 a.m. PT

Meeting Summary Report

The Accelerated Underwriting (A) Working Group met March 24, 2022. During this meeting, the Working Group:

1. Adopted its Feb. 23 minutes.


3. Discussed possible next steps of the Working Group, including working on regulatory guidance.
The Accelerated Underwriting (A) Working Group of the Life Insurance and Annuities (A) Committee met March 24, 2022. The following Working Group members participated: Grace Arnold, Chair (MN); Nathan Houdek, Vice Chair (WI); Jason Lapham (CO); Russ Gibson (IA); Cynthia Amann (MO); Chris Aufenthie (ND); Lori Barron (OH); and David Hippen (WA).

1. **Adopted its Feb. 23 Minutes**

Commissioner Arnold said the first agenda item was to adopt the Accelerated Underwriting (A) Working Group’s Feb. 23 meeting minutes. During this meeting, the Working Group reviewed comments on the Jan. 25 draft of the accelerated underwriting (AU) in life insurance educational report.

Ms. Amann made a motion, seconded by Mr. Aufenthie, to adopt the Working Group’s Feb. 23 minutes (Attachment One-A).

2. **Discussed Comments Received on the March 4 Draft of the AU in Life Insurance Educational Report**

Commissioner Arnold reminded the Working Group that during its Feb. 23 meeting, the Working Group discussed comments on the Jan. 25 draft of the AU in life insurance educational report. As a result of the comments received on the Jan. 25 draft and the discussions during the Feb. 23 meeting, the report was revised, and the March 4 draft was exposed for a 14-day public comment period ending March 18. Commissioner Arnold said that several interested parties had submitted written comments on the March 4 draft, which are posted on the Working Group’s web page.

   a. **University of Georgia**

Brenda J. Cude (University of Georgia) briefly summarized her comment letter. She said that she is concerned that the paper makes no mention of the great need for consumer information and education about AU, yet the paper indirectly makes the case for the need to inform and educate consumers on this topic. She said, at a minimum, she would like the Working Group to consider a charge for the future that could involve creating some language that state insurance departments could use to inform and educate consumers. She also said that these materials could be useful for other educators, as well to help consumers understand this topic. She said she envisions a Working Group similar to the Consumer Information (B) Subgroup to work on consumer-facing materials.

   b. **ACLI**

David Leifer (American Council of Life Insurers—ACLI) briefly summarized the ACLI comments. He said that the ACLI had some minor language suggestions to the paper. He explained that one suggestion was to repeat the language within the definition of AU that says “which may include the use of non-traditional, non-medical data” to other places in the paper where it is not explicitly included.

   c. **Academy**
Sue Bartholf (American Academy of Actuaries—Academy) said that the Academy’s Life Underwriting and Risk Classification Work Group has been following the work of this Working Group and appreciates that this paper is a high-level synthesis of the presentations provided to the Working Group. She said that the Academy remains concerned that because it is a summary, it does not necessarily capture all of the variations in accelerating underwriting and the different perspectives of those commenting. She said that given that this paper has the potential to become a resource for policymakers, regulators, and others, the Academy has submitted the following language for inclusion in the opening paragraph to explicitly call out the limitations of the paper:

“This paper is a high-level summary of the comments provided to and work done by the Accelerated Underwriting (A) Working Group. It is not intended to be a comprehensive document and does not address all the differences and nuances of accelerated underwriting programs or all underwriting practices used by life insurers. It is a point-in-time paper of the rapidly evolving underwriting process.”

Commissioner Arnold said she appreciates the Academy’s comments and that there are a number of places in the paper that contextualize the information as being representative of this point in time. She said that the Working Group understands that these processes are evolving.

d. Pilotbird

Evgeny Aleksandrov (Pilotbird) said he had submitted comments suggesting that the potential benefits of AU to consumers should have more emphasis in the paper.

e. CEJ

Birny Birnbaum (Center for Economic Justice—CEJ) said that the draft report did not fulfill its charge to “[c]onsider 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.” He said the definition in the paper does not focus on external data; rather, it incorrectly says that AU may include nontraditional, non-medical data, when that is in fact the distinguishing feature of AU. He said that if all insurers were doing was applying machine learning (ML) and artificial intelligence (AI) to traditional medical data, that would represent an evolution—not the revolution he is seeing.

Mr. Birnbaum also said the report offers no guidance to the states and references only that states and regulators should be guided by current law related to fair trade practices and unfair discrimination and develop and update relevant laws to adapt to developing practices to avoid unfair trade practices and unfair discriminatory practices. He said these statements suggest that no specific guidance, authorities, or resources are needed. He said the report is six years too late to be meaningful or useful. He said the report represents a lack of insight after six years of study. He recommended the Working Group discard the report and refocus efforts on addressing its charge.

Mr. Birnbaum asked for feedback regarding the Working Group’s thinking with respect to the comments he submitted in the form of questions at the last national meeting. He said that the Working Group has not been transparent in its decision-making. He asked why, in particular, the Working Group was not recommending that states apply the same requirements they apply to consumer credit information.

Commissioner Arnold said that the Working Group hopes, as its next work product, to develop regulatory guidance that builds on the report. She said that the drafting group did discuss Mr. Birnbaum’s comments and will likely
have future conversations that Mr. Birnbaum is welcome to participate in as it considers what is feasible with current resources.

f. University of Connecticut School of Law

Peter Kochenburger (University of Connecticut School of Law) said he understands that the paper is not likely to be abandoned, but he said he is interested in the reasoning behind why some of Mr. Birnbaum’s comments were not included in the paper. He said he is pleased to hear the work is going to continue and asked about the process and whether there was a timeline.

Commissioner Arnold said she anticipates that if the Life Insurance and Annuities (A) Committee adopts the Report, there would then be a discussion of next steps for the Working Group at the Life Insurance and Annuities (A) Committee meeting at the Spring National Meeting. She anticipated that next steps would include work for the remainder of this year.

3. Adopted the March 4 Draft of the AU in Life Insurance Educational Report

Commissioner Arnold said that she appreciates all the comments, but the Working Group is not planning to make any additional changes to the paper.

Ms. Amann made a motion, seconded by Commissioner Houdek, to adopt the March 5 draft of the AU in life insurance educational report (Attachment Two). The motion passed unanimously.

Commissioner Arnold said that the plan is to have the paper go through a final editorial review to fix any grammatical or typographical errors. The Life Insurance and Annuities (A) Committee will consider the paper for adoption at the upcoming Spring National Meeting. Once adopted, it will become a Committee work product, be part of the NAIC Proceedings, and posted on the Life Insurance and Annuities (A) Committee page.

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

SharePoint/NAIC Support Staff Hub/Member Meetings/ 2022 National Meetings/Spring National Meeting/Life Insurance and Annuities (A) Committee/AUWG/AUWG 3-24-22 minutes final.docx
DRAFT March 4, 2022

Adopted by Accelerated Underwriting (A) Working Group on March 24, 2022

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Appendix A: Additional Procedural Background

Resources
New York Circular No. 1
Abbreviated Summary of Presentations
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. Machine learning algorithms are a process or set of

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1 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.
rules executed to solve an equation\(^2\), 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 underwriting process and requires less consumer involvement in the purchase, and it improves the underwriting experience for consumers, shortens issue times, and increases policy acceptance rates.\(^3\)

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\(^2\) 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.

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

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4 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.
• 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 histories, 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 histories, behaviors 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) 5
• 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.
• 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.

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5 This data is subject to the Fair Credit Reporting Act (FCRA).
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 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,
(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.

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.

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6 FCRA applies to consumer reports. Please see 15 U.S. Code § 1681a(d).
7 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).
• 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 the 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. 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. 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.

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:

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
6. Right to restrict the use of data

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.

8 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.

9 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.

10 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).11

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 Brockett12), 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

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12 Gus Wortham Chair in Risk Management and Insurance at the University of Texas at Austin and Editor, North American Actuarial Journal.
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.

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.


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.
July 21, 2015

The Honorable Thomas E. Perez
Secretary
U.S. Department of Labor
200 Constitution Ave., NW
Washington, D.C. 20210

Dear Secretary Perez:

On behalf of the National Association of Insurance Commissioners (NAIC) and its member state insurance regulators, we would like to thank you for the opportunity to comment on the Department of Labor (DOL)’s proposed rule regarding the definition of “fiduciary” as it relates to ERISA plans and IRAs.

The rule is comprehensive and complex, and would make significant changes to retirement plan fiduciary rules that have been in place for almost 40 years. We appreciate the dialogue with your staff since the rule was proposed to gain a better understanding of how the rule is intended to work and potential clarifications you are considering as the rulemaking process continues.

We recognize that oversight of the retirement plans marketplace is a shared regulatory responsibility, and has been so for decades. State insurance regulators, the DOL, SEC and FINRA each have an important role in the administration and enforcement of standards for retirement plans and products within their jurisdiction. From a consumer protection standpoint, it is important that the approaches we as regulators take within the regulatory framework are consistent and compatible as much as possible.

State insurance regulators share the DOL’s commitment to protect, educate and empower consumers as they make important decisions to provide for their retirement security. The states have not only acted to implement a robust set of consumer protection and education standards for annuity and insurance transactions, but have extensive enforcement authority to examine companies, revoke producer and company licenses to operate, as well as collect and analyze industry data. Such authority allows state regulators to identify market issues and take the appropriate regulatory action swiftly and effectively when warranted. So much of protecting consumers comes down to effective enforcement. Although there will always be instances of improper conduct, the states have a strong record of protecting consumers, especially seniors, from inappropriate sales practices or unsuitable products.

1 The National Association of Insurance Commissioners (NAIC) is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia and five U.S. territories. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer review, and coordinate their regulatory oversight. NAIC staff supports these efforts and represents the collective views of state regulators domestically and internationally. NAIC members, together with the central resources of the NAIC, form the national system of state-based insurance regulation in the U.S.
In our discussions to date with DOL officials, we have greatly appreciated their insights on operationalizing a number of provisions of the rule, including the best interest standard, reasonable compensation requirements, sales of proprietary products, differences between educational activities and fiduciary responsibilities, and others. We also appreciate that DOL is open to suggestions on how to further clarify and provide certainty on a number of those areas to limit the potential for unintended consequences, confusion, or litigation.

While we understand and respect the DOL’s role in regulating the ERISA plan marketplace, as the principal regulators of insurance companies and producers it is our duty to consider the implications of the proposed rule on the consumer protection standards we have developed and enforce, as well as its impact on the insurance marketplace. Accordingly, we will carefully evaluate the stakeholder input submitted during the comment period and look forward to further discussions.

Sincerely,

Monica J. Lindeen     John M. Huff
NAIC President     NAIC President-Elect
Montana Commissioner of
Securities and Insurance
Director of Missouri’s Department of Insurance,
Financial Institutions, and Professional Registration

Sharon P. Clark     Theodore K. Nickel
NAIC Vice President     NAIC Secretary-Treasurer
Kentucky Insurance Commissioner Wisconsin Insurance Commissioner

The Honorable E. Benjamin Nelson
NAIC Chief Executive Officer
United States Senator (Ret.)
August 7, 2017

The Honorable R. Alexander Acosta
Office of Exemption Determinations
EBSA (Attention: D–11933)
U.S. Department of Labor
200 Constitution Avenue N.W. Suite 400
Washington, DC 20210

Re: RIN 1210–AB82 Request for Information Regarding the Fiduciary Rule and Prohibited Transaction Exemptions

Dear Secretary Acosta,

On behalf of the National Association of Insurance Commissioners (NAIC)1, we write today in response to the Request for Information (RFI) regarding the U.S. Department of Labor’s Fiduciary Rule published in the July 6, 2017 issue of the Federal Register. At the outset, we strongly encourage the Department of Labor (DOL) to coordinate closely with the NAIC as you review and consider any changes to the Fiduciary Rule.

While the DOL has shared jurisdiction with the states with respect to insurance products sold through ERISA plans, states have regulatory responsibilities with respect to the entire market for such products, including disclosure requirements, professional standards of conduct for agents, and supervisory controls. Some sales distribution of insurance and retirement products is shared with investment advisers, securities agents and dealers, and, in fulfilling the congressional intent of Section 989j of the Dodd-Frank Act, we strive for an appropriate amount of regulatory consistency and harmony with other regulators across all uses and sales channels. Coordination and consultation with state and federal securities regulators with the DOL at this critical juncture would ensure that our approaches are as consistent and compatible as possible to provide effective, clear standards for consumer protection, while avoiding excessive compliance burdens on the industry. We also hope we can be a resource to the DOL as it evaluates the existing rule, how it fits with the existing regulation of insurance products and agent sales, and the impact of the rule on the insurance sector and retirement product purchasers.

Set forth below are answers to specific questions within the RFI relating to regulatory authorities over life and annuity products.

1 Founded in 1871, the NAIC is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia and the five U.S. territories. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer review, and coordinate their regulatory oversight. NAIC members, together with the central resources of the NAIC, form the national system of state-based insurance regulation in the U.S.
How would advisers be compensated for selling fee-based annuities? What regulatory filings are necessary for such annuities?

Compensation can be determined based on a one-time percentage of the annuity premium deposit, or small percent paid periodically over a number of years, or a combination of the two methods. The compensation method and percentage applied varies by company, annuity payout option, age of the buyer or other criteria, depending on the product design of the retirement product.

Insurers are required to make regulatory filings relating to their annuity products with state insurance regulators. Companies are required to disclose the guaranteed maximum fees and charges to which the policy is subject. Sales compensation is usually paid from those charges.

All annuity contracts, including fee-based annuity contracts, must comply with applicable state laws including those addressing, for example, required policy provisions, prohibited policy provisions, permitted exclusions and prohibited exclusions, policy format requirements, readability requirements and supporting documentation requirements, such as actuarial memorandum requirements. Generally, the policy, application, riders and endorsements are required to be submitted in the filing along with the actuarial documentation to demonstrate compliance with nonforfeiture requirements. Some states will perform prior review and approve the product for sale in advance (“prior approval”) while other states permit insurers to file the product and sell it unless the product filing is disapproved by the regulator (“file and use.”) In addition, 44 states and Puerto Rico, representing more than 75% of premium volume, are part of an Interstate Insurance Compact (Compact). The Compact established a multi-state public entity, the Interstate Insurance Product Regulation Commission (IIPRC), which serves as an instrumentality of the Member States. The IIPRC stands in the shoes of the compacting states and serves as a central point of electronic filing for certain insurance products, including life insurance, annuities, disability income, and long-term care insurance to develop uniform product standards, while at the same time affording a high level of protection to purchasers of asset protection insurance products.

If the Securities and Exchange Commission or other regulators were to adopt updated standards of conduct applicable to the provision of investment advice to retail investors, could a streamlined exemption or other change be developed for adviser that comply with or are subject to those standards? To what extent does the existing regulatory regime for IRAs by the Securities and Exchange Commission, self-regulatory bodies (SROs) or other regulators provide consumer protections that could be incorporated into the Department’s exemptions or that could serve as a basis for additional relief from the prohibited transaction rules?

We believe such an exemption could be developed, but would require careful consideration of existing standards and supervisory systems. For example, if the SEC were to adopt revised standards of conduct for advisers or FINRA were to adopt best interest standards for registered representatives, those standards would involve supervisory systems that are generally recognized by state insurance regulators as complementary. Indeed, insurance regulation is currently in harmony with federal and state securities regulation for shared distribution channels. In addition, consumer protection is the hallmark of the state-based insurance regulatory system, and a robust regulatory framework upon which an exemption could be based, already exists with respect to the sale of insurance and annuity products. In particular, state insurance regulators are in close proximity to the unique aspects of their states and consumers and are able to respond relatively quickly to issues when they arise.

By way of background, the states have developed a conservative financial solvency regulation regime designed to ensure that insurer obligations will be met both today and many years in the future, and a market conduct regime designed to ensure that life insurance and annuity customers are treated fairly. Companies, agents, and brokers are required to be licensed and appropriately trained in order to sell life
and annuity products. As part of the NAIC’s uniform licensing standards, every state requires any individual who wants to sell annuity products to successfully pass their approved examination as well as to meet minimum background and integrity standards prior to beginning their sales career. States also have requirements in place for producers to renew their licenses on an annual basis. Beyond that, regulators have broad authorities to police the conduct of insurers and producers. Market conduct analysis and examinations occur on a routine basis, but also can be triggered by risk assessments, market trends, data analysis and complaints against an insurer. These investigations and examinations review producer licensing issues, complaints, types of products sold by insurers and producers, producer sales practices, supervision and internal control systems, compliance with filed rating plans, claims handling and other market-related aspects of an insurer’s operation. When violations or inadequate controls are found, the insurance department makes recommendations to improve operations and to bring the company into compliance with state law. State regulators have authorities under the Unfair Trade Practices laws to sanction misconduct by companies, agents, and brokers including misconduct relating to annuity sales. If a violation is found, an insurer or insurance agent or broker may be subject to civil penalties or license suspension or revocation.

Importantly, state insurance regulators, through the NAIC, have adopted regulations that companies, agents, and brokers selling annuities must comply with in order to ensure the suitability of the annuity for the consumer. In fact, in 2010, Congress re-affirmed the primacy of state regulation in Section 989j of the Dodd-Frank Act with respect to fixed indexed annuities. Much of this framework is based on NAIC model regulations that have been widely adopted by the states. The NAIC’s Suitability in Annuity Transactions Model Regulation (#275) sets forth standards and procedures for recommendations to consumers that result in a transaction involving annuity products to ensure the insurance needs and financial objectives of consumers are appropriately met at the time of the transaction. The Annuity Disclosure Model Regulation (#245) establishes standards for specific product understanding and the disclosure of certain information about annuity contracts to protect consumers and foster consumer education. The Life Insurance and Annuities Replacement Model Regulation (#613) provides regulatory oversight of insurer and producer annuity and life insurance replacement activities. The Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities (#278) establishes standards for the use of senior-specific certifications and professional designations by insurance producers in the sale of life insurance and annuities. The NAIC also provides consumers information and issues alerts relating to potentially abusive sales practices in the sale of annuities to seniors.

Market analysis and risk-based consumer protection by state insurance regulators, and insurance sector compliance, has significantly increased since the passage of Section 989j. While reconsideration of insurance adviser standards of conduct is warranted, the NAIC has a strong interest in avoiding inconsistent market regulation across the business of insurance. Notwithstanding the existing rules, we acknowledge that there is broad consensus among widely disparate groups for an updated and consistent standard for providing personalized investment advice to retail investors. Accordingly, we have been working to update our suitability standards and sales practices for life insurance and annuities. The NAIC is in the process of considering revisions to its suitability rules to potentially include a best interest standard of care. Should the Department of Labor decide a streamlined exemption could be developed for “advisers that comply with or are subject to updated standards of conduct applicable to the provision of investment advice,” we believe both our existing regulatory framework as well as our ongoing work to enhance those authorities would provide an appropriate basis for such an exemption. We strongly encourage the DOL to coordinate with us as we seek to update these rules and we appreciate that the DOL has already agreed to this cooperation in a meeting of the NAIC working group tasked to evaluate our existing standards.

Conclusion
Thank you for the opportunity to comment on this Request for Information. We hope to work closely with you moving forward. Through coordination we can ensure consumers are protected while at the same time achieving regulatory consistency to reduce burdens on industry as they seek to comply with our respective regulatory frameworks. Should you have any questions, do not hesitate to contact Mark Sagat, assistant director financial policy and legislation, at msagat@naic.org or (202) 471-3987 or Heather Eilers-Bowser, financial policy and legislative counsel, at heilersbowser@naic.org, or (202) 471-3973.

Sincerely,

Theodore K. Nickel
NAIC President
Commissioner
Wisconsin Office of the Commissioner of Insurance

Julie Mix McPeak
NAIC President-Elect
Commissioner
Tennessee Department of Commerce & Insurance

Eric A. Cioppa
NAIC Vice President
Superintendent
Maine Bureau of Insurance

Raymond G. Farmer
NAIC Secretary-Treasurer
Director
South Carolina Department of Insurance

Michael F. Consedine
Chief Executive Officer
National Association of Insurance Commissioners
Implementation of 2020 Revisions to Model #275
Suitability in Annuity Transactions Model Regulation
[status as of March 28, 2022]

Disclaimer: This map represents state action or pending state action regarding NAIC amendments to the model(s). This map does not reflect a determination as to whether the pending or enacted legislation contains all elements of NAIC amendments to the model(s) or whether a state meets any applicable accreditation standards.
Meeting Summary Report

The Life Actuarial (A) Task Force met March 31, 2022. During this meeting, the Task Force:

1. Adopted its March 17, March 10, March 3, Feb. 24, Feb. 17, Feb. 10, Feb. 3, and Jan. 27 minutes, which included the following action:
   A. Disbanded the Guaranteed Issue (GI) Life Valuation (A) Subgroup.
   B. Adopted its 2021 Fall National Meeting minutes.
   C. Adopted amendment proposal 2021-11, which adds a section for other guidance and requirements for assumptions to VM-21, Requirements for Principle-Based Reserves for Variable Annuities.
   D. Adopted amendment proposal 2022-01, which clarifies the treatment of the pre-reinsurance ceded reserve and the reserve credit for retrocessions.
   E. Forwarded a proposal to the Blanks (E) Working Group.
   F. Exposed amendment proposal 2022-02, which revises language and adds an explicit cross-reference to the VM-21 section.
   G. Exposed amendment proposal 2022-03, which updates cross-references and improves consistency between VM-20, Requirements for Principle-Based Reserves for Life Products, and VM-21.
   H. Exposed amendment proposal 2022-04, which proposes updates to the VM-20 prescribed swap spreads guidance considering the London Interbank Offered Rate (LIBOR) transition to the Secured Overnight Financing Rate (SOFR).

2. Exposed models for field testing the economic scenario generator (ESG).

3. Adopted the report of the Longevity Risk (E/A) Subgroup.

4. Adopted the report of the Variable Annuity Capital and Reserve (E/A) Subgroup.

5. Adopted the report of the Experience Reporting (A) Subgroup.

6. Adopted the report of the Valuation Manual (VM)-22 (A) Subgroup.

7. Adopted the report of the Index-Linked Variable Annuity (A) Subgroup, including its March 9, March 2, and Feb. 16 minutes.
8. Adopted the report of the Indexed Universal Life (IUL) Illustration (A) Subgroup.


10. Adopted amendment proposal 2022-03.

11. Re-exposed amendment proposal 2020-12, which revises hedge modeling when future hedging strategies are not clearly defined for a 30-day public comment period.

12. Discussed comments received on the exposure of the Asset Adequacy Testing (AAT) actuarial guideline and heard Task Force member recommendations for revisions for the next exposure.

13. Heard an update on the key GEMS Equity Model considerations for the ESG and an update on the American Academy of Actuaries (Academy) model office results.

14. Heard an update from the Society of Actuaries (SOA) on research and education.

15. Heard an update on the activities of the Academy Life Practice Council.
Recommendations for Life Insurance Pages

Laura Kane, Director of Communications

April 2022
23,147 Unique Page Views

13% were Age 18-24   Spends the second most time
21% were Age 25-34
23% were Age 35-44   Spends the most time on page
20% were Age 45-54
13% were Age 55-64
10% were 65 or older   Spends the least amount of time
Consumer Pages

• Educate about the purpose of each insurance type

• Guide consumers to understand know what to ask a licensed agent

• Remind consumers to check their state’s DOI website to confirm the agent and the company are licensed in the state

• Let consumers know their state DOI is here to help with any questions or issues
Push Campaign

- Do you know what type of life insurance is right for you?
- How to be a Life Insurance Beneficiary
- Tips to help you understand how to purchase life insurance
- Be Weary of a Free Lunch
- How to use the LIPL
Existing Website Information

- What is Term Life
- What is Cash Value
- Myths and realities
- FAQs
- Consumer Guides to Life Insurance
- Consumer Guide to Annuities
- Consumer Guide to Cancer Insurance
- LIPL
- Video
- Be Prepared before you buy
Be Prepared Before You Buy

• Review Your insurance Needs
• Decide How much Coverage you need
• Assess your Current Policy
• Compare different types of insurance policies
• Be Sure You Can Afford the Premium Payments
• Have and Insurance Agent Help You Evaluate Your Needs
• Keep Your Policy Current
• Review Your Life Insurance Program Regularly
In short

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>What you need to know before you talk to an agent</td>
</tr>
<tr>
<td>2</td>
<td>Reminder to keep your policy current</td>
</tr>
<tr>
<td>3</td>
<td>Remind users that they can get help at the DOI</td>
</tr>
</tbody>
</table>
What We Should Incorporate From DOI Sites

• Kansas has good shopping tips
• Nevada has a good section “Understand the products you are buying”
• New York has a good statement of purpose around life insurance
• Texas has a good chart comparing the major types of life insurance
Other Best Practices

Link to glossary terms

Translate the Buyers Guide to Spanish and other languages