# LIFE INSURANCE AND ANNUITIES (A) COMMITTEE

Life Insurance and Annuities (A) Committee March 23, 2023, Minutes
Life Insurance and Annuities (A) Committee Feb. 24, 2023, Minutes (Attachment One)
Accelerated Underwriting (A) Working Group Feb. 22, 2023, Minutes (Attachment Two)
AUWG Regulatory Guidance Document Draft 1-23-23, (Attachment Two-A)
AUWG Referral to Market Conduct Examination Guidelines (D) Working Group Draft 1-23-23 (Attachment Two-B)

Draft: 4/3/23

Life Insurance and Annuities (A) Committee
Louisville, Kentucky
March 23, 2023

The Life Insurance and Annuities (A) Committee met in Louisville, KY, March 23, 2023. The following Committee members participated: Judith L. French, Chair (OH); Carter Lawrence, Vice Chair (TN); Mark Fowler (AL); Barbara D. Richardson (AZ); Karima M. Woods represented by Philip Barlow (DC); Doug Ommen (IA); Vicki Schmidt (KS); James J. Donelon (LA); Eric Dunning (NE); Marlene Caride (NJ); Scott Kipper (NV); Adrienne A. Harris represented by Mona Bhalla (NY); Glen Mulready (OK); Scott A. White represented by Don Beatty and Craig Chupp (VA); and Nathan Houdek (WI). Also participating was: Rachel Hemphill (TX).

1. <u>Adopted its Feb. 24 Meeting Minutes</u>

Director French said the Committee met Feb. 24 and took the following action: 1) adopted its 2022 Fall National Meeting minutes; 2) adopted revisions to *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 49A); and 3) adopted *Actuarial Guideline LIV—Nonforfeiture Requirements for Index-Linked Variable Annuity Products* (AG 54).

Commissioner Caride made a motion, seconded by Director Dunning, to adopt the Committee's Feb. 24 minutes (Attachment One). The motion passed unanimously.

2. <u>Adopted the Report of Life Actuarial (A) Task Force</u>

Hemphill said the Life Actuarial (A) Task Force met Mar. 20–21 at the Spring National Meeting. She said the Task Force had a robust discussion of the impacts of a rising interest rate environment, including hearing from the Society of Actuaries (SOA) on relevant actuarial research, as well as hearing from company actuaries regarding their sensitivity testing and ongoing monitoring of the appropriateness of their assumptions, including dynamic lapse behavior.

Hemphill said the Task Force re-exposed an amendment proposal form (APF) to shorten the time lag in Valuation Manual (VM)-50/VM-51 mortality experience reporting from two years to one year. She explained that this change will require a transitional year in which companies submit two years of mortality experience data, but then it will allow for more timely analysis and reporting of mortality experience and the development of mortality tables. She said the industry supports these efforts, but there may be a need for additional flexibility in the reporting deadlines in the first year or two as companies adjust their processes to the new reporting timeline.

Hemphill reported that the Task Force continued discussion on the work to develop a replacement economic scenario generator, including hearing an update on the activities of the Economic Scenario Generator Governance Drafting Group and the Economic Scenario Generator Technical Drafting Group and hearing a presentation from NAIC staff on quantitative results from the Economic Scenario Generator field test.

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

3. <u>Adopted the Report of the Accelerated Underwriting (A) Working Group</u>

 

Commissioner Houdek said the Accelerated Underwriting (A) Working Group met Feb. 22 and took the following action: 1) exposed the draft regulatory guidance for accelerated underwriting (AU) in life insurance for a 45-day public comment period ending April 15; and 2) exposed the draft referral to the Market Conduct Examination Guidelines (D) Working Group for a 30-day public comment period ending March 24.

Commissioner Lawrence made a motion, seconded by Commissioner Ommen, to adopt the report of the Accelerated Underwriting (A) Working Group, including its Feb. 22 minutes (Attachment Two). The motion passed unanimously.

4. <u>Heard a Presentation from the ACLI and the SOA on the Current State of Life Insurance</u>

Patrick C. Reeder (American Council of Life Insurers—ACLI) explained that the ACLI's chief economist and vice president of research, Andrew Melnyk, will be giving a high-level presentation focused solely on life insurance and not the other products that life insurers sell. He said that Dale Hall, managing director of research at the SOA Research Institute, will give the second part of the presentation, focusing on mortality trends.

Melnyk discussed a number of slides illustrating the changes in life insurance over time from a variety of vantage points. His first slide showed annual percentage changes in life insurance death benefits paid from 1910 to 2021 to illustrate how the last few years of the COVID-19 pandemic fit into the historical context. He said between 1920 and 2021, the greatest percentage increases occurred in 1918, which saw a 40% increase, followed by 1926, with a 15.3% increase. Next was 2020, which saw a 15.4% increase, and 2021, which saw a 10.8% increase. The next slide illustrated life insurance death benefits paid over time between 1880 and 2021 in dollars, adjusted for inflation. He said the graph shows increases in the actual amounts paid over time, with a steep, significant jump in the amount paid over the last two years. He said this illustrates why the life insurance industry is important and that it has been consistently meeting its obligations.

Melnyk said the next slide shows annual life insurer risk-based capital (RBC) ratios between 2018 and 2021. He said the average RBC ratio in 2020 was 428%. In 2021, it was 443%, which is a bit better than the average in 2018, when it was 424%. He said the percentage of companies with RBC greater than 200% (by assets) in those four years also has remained relatively constant. There are less than 1% of companies with RBC below 200%, which illustrates the strength of the life insurance industry.

Melnyk said the next slide compares individual and group life insurance purchases between 1985 and 2021. He said the graph shows a steady increase in individual life insurance purchases over time. He said there was a slight dip in group purchases between 2019 and 2021 during the COVID-19 years, which can be attributed, at least in part, to the erratic labor market and unprecedented unemployment due to stay-at-home orders. He said that individuals continue to purchase life insurance, and he anticipates a continuing increase in individual purchases. He said that in looking back in history, there was unprecedented growth in the life insurance market in the years following the 1918 pandemic. He said between 1917 and 1926, the dollar amount of in-force life insurance more than doubled. He said that there were other factors involved at the time, like World War I and an exploding economy, but he said he thought that the industry might experience an increase coming out of COVID-19, just to a lesser degree. He said there seems to have been an increase in demand for life insurance during the last few years, but that may be short-lived. He said the Life Insurance Marketing and Research Association (LIMRA) has looked into this and anticipates things will return to a more normal level.

Melnyk discussed the next slide showing a graph of life insurance as a percentage of gross domestic product (GDP) from 1945 to 2021. He said the graph strips away price and premiums and shows mortality and the savings component of life insurance in relation to the economy as a whole. He explained that the graph shows that life insurance, as a percentage of GDP, was on an upward trend throughout most of the World War II era, but since the mid-1990s, it has started to fall. He said that he does not have an explanation for this trend, and it is something that requires much more study, but it suggests society is underinsured.

The last slide graphs the percentage of families reporting any life insurance coverage between 1968 and 2019, based on data from the U.S. Federal Reserve *Survey of Consumer Finances* (SCF), which is an extensive survey of household finances. He said this graph shows that the percentage of families self-reporting any life insurance coverage at all has steadily declined, from a high of 85.4% of families reporting life insurance coverage in 1971, to a low of 59.4% of families in 2019. He said once more current data is available, it will be seen if the pandemic had any effect on these numbers.

Reeder pointed out that the ACLI *Life Insurers Fact Book* was the resource for much of the data provided in the presentation. He said it contains a great deal of information about the life insurance industry and is available on the ACLI's website. He said that the data in the first few slides of the presentation shows that state insurance regulation works and that the industry provides an important resource for consumers. He said that while the last couple of slides show a decline, the ACLI is looking into the reasons for that decline and how to remedy that, which involves delving into questions of race and insurance and how to break down barriers to access, particularly in underserved communities. He said that the ACLI is researching how technology may decrease barriers and increase access in underserved communities.

Hall said, in his presentation, he would make some observations about mortality and discuss how those population trends relate to insured mortality based on reviewed historical U.S. population mortality data from the Centers for Disease Control and Prevention (CDC). He said since 1999, there have been reasonably strong mortality improvements in the U.S., with the strongest improvements in the first 10 years of this century. After that, between 2010 to 2019, mortality continued to improve but at a slower pace. In 2019, the population mortality rate was 715 deaths per 100,000. He said there was a 16.8% increase in 2020 (4.9% with COVID-19 removed) with age-adjusted rates at 835 deaths per 100,000. He said mortality increased again in 2021 by another 5.3%, with 880 deaths per 100,000, which is the same mortality rate as in 1999. Hall said we are awaiting fourth-quarter 2022 data, but the full year is looking like it is down from 2021, which is close to results for 2020. Hall said that population life expectancy is one statistic that can be used to compare where trends are over time.

Hall reviewed the next slide showing changes in mortality rates by cause of death. Hall said heart disease has increased as a cause of death in the population after many years of downward trends, and mortality due to cancer increased for the first time in 22 years. Hall pointed out that there was a large increase in mortality due to chronic conditions such as diabetes, liver disease, and hypertension. Hall said that many of these may be the result of people putting off care during the pandemic and hopefully will improve as people return to normal. Hall discussed the chart comparing the relationship between population mortality trends to group life and individual life trends. Historically, insured mortality is 30%–50% of what happens in the population, and this seems to have held true during the pandemic. He showed a slide illustrating actual to expected mortality trends in the insured market compared with actual and expected mortality trends in the population. He said some of the largest actual to expected ratios occurred during the delta and omicron variants in late 2021. He said data for the second quarter of 2022 shows the ratio of actual to expected claims below 100% for the first time since the start of the pandemic, and there may be some indication, based on third- and fourth-quarter data from 2022, that things are slowly getting back to a more normal actual to expected ratio. Hall explained that his final slide shows ratios of individual life insurance claims during 2020–2022 compared to 2017–2019. He said the largest individual life mortalities were in the third or fourth quarter of 2021 and started to come down in 2022.

Commissioner Lawrence asked about the ACLI slide that showed a 25% decline in the percentage of households reporting life insurance coverage from the high in 1971 to the low in 2019. He wondered whether there was any information available that would show the demographic distribution of the decline, such as the differences by geographical area or socioeconomic sector. Melnyk said they had not looked into that data very deeply and did not have that information. Commissioner Mulready said that a 25% decline in coverage and a 25% increase in death rates is concerning for the industry. Reeder said that this was a large reason why the ACLI is spending a lot of time making sure it accesses consumers and identifies what has changed to cause the decline. He said that the ACLI does not have the socioeconomic and demographic information related to data that comes from the federal government. He said that there have been a lot of changes in family structure over time, and the insurance industry has to learn to innovate. He said that the industry has to be more deliberate in its efforts to reach underrepresented communities and that it must make sure barriers come down and engagement is fostered in the industry at every level.

Commissioner Mulready said he heard a report of a 40% increase in deaths and another report recently about an increase in heart attacks in young people. He asked if there was any information about the average age of death. Reeder said the ACLI saw that reporting, and the thinking is that the reporting was based on early SOA research that was not fully understood by those reporting on it as far as the trending. Hall said that there are many ways to look at group life data, such as by occupation code or areas of the country. He said another important way to study excess mortality is by looking at different age bands. Hall said some of the overall pandemic results show a 30% increase in excess mortality, and some of that was concentrated in some of the younger working ages. He cautioned, however, that the mortality rates for younger age groups are already quite low, so when excess deaths are added on to what is already a small number, the percentages get higher. Hall said that in the group insurance market, it is important for insurers to consider demographic data in order to make the right assessment of the risks associated with a particular group. He said, for example, that insurers should consider the potential impact of retired lives that might be part of the group, or how much of the group is the working population, and that different occupation codes have different exposures, especially during a pandemic.

Commissioner Donelon said that he was in Tokyo about 10 years ago for a meeting about the much higher take-up rate per capita of life insurance in Japan than in the U.S. but that Europeans owned much less life insurance. He said if this is still the case, it might indicate that cultural factors are the driver of whether someone purchases insurance. Melnyk said that he is not aware that the statistics have changed and thinks there are many variables that affect the demand for life insurance. He said cultural factors are variables to be considered. He said he knows that, for example, in Japan, it is not uncommon for a person to purchase a whole life insurance policy as soon as they graduate from college. He said that saving is also much more common in the culture, so that may have something to do with it as well.

Birny Birnbaum (Center for Economic Justice—CEJ) said the ACLI *Life Insurers Fact Book* contains some interesting information that could complement the presentation. He said in 1955, the U.S. population was around 165 million people, and there were 22 million individual life insurance policies in force. He said in 2021, the population had doubled, but there were only 10 million individual insurance policies in force. He said the number of group certificates during that same time frame went up from 2.2 million to more than 25 million, but that is still less than what was in force for group policies in 2004. Birnbaum said these statistics illustrate that insurance companies are marketing their products more as investments than death protection and focusing more on affluent consumers and higher face amount policies.

Birnbaum said another piece of information that gets at the issue of underserved communities is the difference in life expectancy by income and by race. He said there is a widening gap in life expectancy based on income and that communities are underserved, not because of changing needs for life insurance, but because producers are not serving them. He said that these factors need to be considered when thinking about how to address insurance for the underserved. He said that insurance companies recognize these trends, so the question is how to get involved with more loss prevention and loss mitigation to make risky policies less risky and more attractive for insurance companies to write. Brendan Bridgeland (Center for Insurance Research—CIR) asked if there have been any comparisons of product offerings and innovations and the decline in household life insurance ownership. He asked whether there has been a focus on using life insurance products as investment planning for high-net-worth individuals at the same time as a decline in sales to lower and moderate-income families.

Reeder said that since 1955, there has been an increase in group life insurance, which is a part of the socioeconomic changes during which insurance became more readily accessible through the workplace. The ACLI agrees with Birnbaum and Bridgeland and wants to bring products to the consumers who need them. He said if the industry is not thoughtful about increasing access, it will continue to struggle, which is why they are putting time and energy into programs and initiatives to decrease barriers to producer licensing and being thoughtful as an industry. He said that Birnbaum and Bridgeland raise valid concerns, and they are the types of things the ACLI is looking at. Melnyk said that the ACLI has not done a study like Bridgeland suggested of product offerings. He said there have been some observations looking at ownership patterns in underserved communities, and there is some indication that ownership peaks at later ages. Still, there has not been a lot of research done beyond that.

Director Richardson said that around five years ago, she heard that the average age of a life insurance producer was approximately 57 years old. She wondered if that was still true or if the industry had found a way to reach a younger and more diverse group.  Reeder said that is still the case and that the industry recognizes the need to bring new people into the industry, not just as producers, but in every aspect of the industry. Reeder said he would provide some follow-up information about the industry efforts in this area.

Brenda J. Cude (University of Georgia) said that the graph showing the percentage of families reporting any life insurance comes from data from the SCF, which notoriously does not do a good job of asking life insurance questions. She said one example is a question regarding health insurance. The question asks if a person has health insurance; if they do not, it asks why. She said there is no parallel question for life insurance. She also said the survey asks about term and whole life insurance, but it is possible that a person has universal life or coverage through an employer and may answer no. She said if there was a desire to make suggestions to the Federal Reserve Board (FRB) regarding ways to improve the questions they ask about life insurance in the SCF, she would be available to assist with that project. She said she knows many researchers who would value that. Melnyk said this was a comprehensive survey, but the depth could be better, so to the extent that the NAIC would want to work with the FRB to improve the survey, it would be willing to help. He also mentioned that the ACLI uses a proprietary database to confirm the information from the SCF and has found that the information generally matches. Birnbaum suggested that some of the granular data that the NAIC collects could be repurposed to inform some of the questions and research that was talked about.

5. <u>Discussed Other Matters</u>

Director French recognized Peter G. Gallanis' retirement as president of the National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) with the following resolution:

> WHEREAS, Peter G. Gallanis has served as President of the National Organization of Life and Health Insurance Guaranty Associations ("NOLHGA") since 1999 and, prior to that, served as the Special Deputy Insurance Receiver for the State of Illinois; and
>
> WHEREAS, Peter has been a longtime friend and supporter of the NAIC, working with Insurance Commissioners and NAIC Task Forces and Working Groups on a host of issues relating to troubled company resolution; and
>
> WHEREAS, Peter has worked tirelessly to protect consumers of insolvent life and health insurance companies and to support the national state-based guaranty system, including by speaking and testifying on insurance matters before a number of courts, state legislatures, Congress, the NAIC, the IAIS, and the FSB; and

WHEREAS, Peter's dedication to the guaranty system has taken him around the world, from Canada to Switzerland to Taiwan to Thailand and to state capitals across the country, not to mention his beloved Chicago.

THEREFORE, BE IT RESOLVED, that the Life Insurance and Annuities (A) Committee wishes to express its heartfelt gratitude to Peter G. Gallanis, on the occasion of his retirement as President of NOLHGA, for more than three decades of service to state regulators, the guaranty system, and the consumers they protect.

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

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Draft: 3/8/23

Life Insurance and Annuities (A) Committee
Virtual Meeting
February 24, 2023

The Life Insurance and Annuities (A) Committee met Feb. 24, 2023. The following Committee members participated: Judith L. French, Chair, and Peter Weber (OH); Carter Lawrence, Vice Chair (TN); Mark Fowler (AL); Shane W. Foster (AZ); Karima M. Woods (DC); Doug Ommen (IA); Vicki Schmidt (KS); James J. Donelon (LA); Eric Dunning represented by Megan VanAusdall (NE); Marlene Caride (NJ); Nick Stosic (NV); Adrienne A. Harris represented by Mona Bhalla (NY); Scott A. White (VA); and Nathan Houdek (WI). Also participating were: Fred Andersen (MN); Glen Mulready (OK); and Rachel Hemphill (TX).

1. Adopted its 2022 Fall National Meeting Minutes

Commissioner Houdek made a motion, seconded by Commissioner Ommen, to adopt the Committee's Dec. 14, 2023 minutes (*see NAIC Proceedings – Fall 2022, Life Insurance and Annuities (A) Committee*). The motion passed unanimously.

2. Adopted the Revised AG 49-A

Hemphill explained that the Life Actuarial Task Force adopted edits to *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), effective May 1, 2023, to address an issue in indexed universal life (IUL) illustrations where some companies are illustrating non-benchmark indices in a more favorable manner than benchmark indices, particularly for products with uncapped volatility-controlled funds and a fixed bonus. These "quick fix" edits address a pressing issue in current practice, while the Indexed Universal Life (IUL) Illustration (A) Subgroup continues to discuss longer-term larger-scale improvements.

Andersen clarified that the revisions to AG 49-A are proposed to be effective for illustrations of policies that are sold on or after May 1, 2023. He said the term "sold" has been used in the past, is the term in the current guideline, and has not presented a problem.

Birny Birnbaum (Center for Economic Justice—CEJ) said that the term "sold" is still unclear and would allow for the continued use of illustrations that have been determined to be deceptive and abusive well after May 1. He said not only will policies not be fully paid for until well after May 1, but also policies that were sold before May 1 will continue to be illustrated using the old methodology after May 1. He suggested that it would be easier to administer and more protective of consumers to prohibit the use of the illustrations after May 1. Birnbaum said that insurers would not be required to go back and re-do any illustrations; it would simply require companies to say that they are no longer going to be using the illustration methodology that is deceptive and that state insurance regulators have decided is not appropriate.

Andersen clarified that the revisions to AG 49-A arose out of a concern that there should be a level playing field between the illustrations of benchmark indices and non-benchmark indices, rather than the determination that the illustrations were misleading, per se. Birnbaum said that even if state insurance regulators have not explicitly said the illustrations were misleading, the fact that the guideline has been revised twice is an implicit acknowledgment that insurers have continued to use product design to game the illustration guideline.

Director French said she appreciates Birnbaum sharing his point of view. She reiterated that these changes were just a first step, more work was ongoing, and that "sold" was the term used in the original guideline. Director French said that the revisions to AG 49-A are an example of state insurance regulators trying to get ahead of any actions that could be misleading. She said state insurance regulators also have market conduct exams as a tool available to address any activities that are in fact misleading to consumers.

Commissioner White made a motion, seconded by Commissioner Donelon, to adopt the revisions to AG 49-A (*see NAIC Proceedings – Spring 2023, Executive (EX) Committee and Plenary, Attachment ?*). The motion passed unanimously.

3. <u>Adopted AG 54</u>

Hemphill explained that the Life Actuarial (A) Task Force adopted *Actuarial Guideline LIV—Nonforfeiture Requirements for Index-linked Variable Annuity Products* (AG 54) addressing index-linked variable annuities (ILVAs), effective July 1, 2024. AG 54 provides principles outlining the conditions under which an ILVA is consistent with the definition of a variable annuity and exempt from the *Standard Nonforfeiture Law for Individual Deferred Annuities* (#805) and specifies nonforfeiture requirements consistent with variable annuities. The guideline promotes consistency while allowing for reasonable product variation, outlining that interim values should provide equitable treatment to the contract holder and the insurance company.

Weber said that this guideline is important because it ensures that consumers' expectations are met in that gains will be realized when indices go up, not just that they will experience losses when the indices go down.

Commissioner White made a motion, seconded by VanAusdall, to adopt AG 54 (*see NAIC Proceedings – Spring 2023, Executive (EX) Committee and Plenary, Attachment ?*). The motion passed unanimously.

4. <u>Discussed Any Other Matters</u>

Director French said that there had been some discussions about using national meetings as an opportunity to have presentations of general interest to a wide audience. She asked anyone having any ideas for topics or areas of interest that the Committee might want to hear about to let her or Jennifer Cook (NAIC) know.

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

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Draft: 3/13/23

Accelerated Underwriting (A) Working Group
Virtual Meeting
February 22, 2023

The Accelerated Underwriting (A) Working Group of the Life Insurance and Annuities (A) Committee met Feb. 22, 2023. 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); Ross Hartley (ND); Megan VanAusdall (NE); Matthew Gendron (RI); and David Hippen (WA).

1. Exposed the Draft of an Accelerated Underwriting Guidance Document and Referral

Commissioner Houdek explained that he would chair the Working Group in 2023 along with Commissioner Grace Arnold (MN) as vice chair. He said that since the Working Group met last, a regulator-only drafting group has been working on developing guidance for regulators on accelerated underwriting. He explained that a draft Accelerated Underwriting Guidance Document (Attachment Two-A) along with a draft referral to the Market Conduct Examination Guidelines (D) Working Group (Attachment Two-B) were distributed prior to the call. Commissioner Houdek explained that the purpose of the virtual meeting today is to review these drafts and formally expose them for comment.

Gillaspey reviewed the draft guidance document and referral. She said the document begins with a brief explanation of NAIC process—that the Working Group was created in 2019 and drafted an educational paper that was adopted by the Life Insurance and Annuities (A) Committee in the Spring of 2022. She said the guidance keys off on a definition of accelerated underwriting that was the result of the presentations heard by the Working Group and the subsequent feedback that the Working Group received through drafting the educational paper. She explained that the guidance focuses on ensuring that life insurers utilize new technologies in ways that comply with existing laws. In addition to coordinating with other NAIC groups working on similar issues, the guidance recognizes that future efforts to develop additional regulations, model laws, data processes, and tools that apply to insurers, data, and vendors may be needed. Gillaspey explained that the guidance focuses on questions and considerations for Departments of Insurance (DOIs) as they review accelerated underwriting programs focusing on ensuring that accelerated underwriting programs are fair, transparent, and secure, and includes examples of questions and requests for information that DOIs may want to use. The goal is to create a useful working document for regulators.

Gillaspey said the Working Group also developed a referral to the Market Conduct Examination Guidelines (D) Working Group, asking them to consider adding some specific guidance to the *Market Regulation Handbook*. She said that the drafting group thought the *Market Regulation Handbook* (Handbook) was a logical place to house some of the knowledge that came out of the educational paper and would be useful to regulators during reviews involving accelerated underwriting programs. She explained that the additions to the Handbook would be based on the *Unfair Trade Practices Act* (#880) and would provide specific guidance to regulators regarding questions to ask life insurers and the types of documents they may want to review to ensure that accelerated underwriting programs are not unfairly discriminatory—that data is fair, data use is transparent, and data is secure. She said the Accelerated Underwriting (A) Working Group is happy to work with the Market Conduct Examination Guidelines (D) Working Group at any point as it considers this referral and any additions to the Handbook.

Birny Birnbaum (Center for Economic Justice—CEJ) asked whether the drafting group had considered making a referral to the Innovation, Cybersecurity, and Technology (H) Committee. He also asked why the drafting group thinks there is a need for additional regulations, models, processes, and tools if current regulations apply. Also, regulators have broad authority to review accelerated underwriting programs in the same way as traditional underwriting programs and ensure they are not unfairly discriminatory. Gillaspey explained that the drafting group wanted to have as many useful tools as possible for regulators as they review these products, and the Handbook is a tool for that. She said that it makes sense to give examiners an idea of the kinds of questions to ask based on the information learned through the process of researching and drafting the educational report. Van Buren said that insurers are using accelerated underwriting programs currently, and regulators need the appropriate tools to ask about these practices. She said other groups are also looking at these issues and that there is a survey underway looking at accelerated underwriting in life insurance that will inform any future actions on this topic. Any revisions to the Handbook put out now will ensure that practices comply with existing law.

Birnbaum asked where existing laws fall short of necessitating additional regulations, model laws, data processes, and tools. Van Buren said that additional information will likely come from the other groups that are looking into this issue, as well as out of the survey that is underway. Miguel Romero (NAIC) mentioned that the Innovation, Cybersecurity, and Technology (H) Committee is aware of the ongoing work of this Working Group. Romero also explained that a referral to the Market Conduct Examination Guidelines (D) Working Group makes sense right now because there is an existing Handbook that can be revised to address the issue. On the other hand, while the Innovation, Cybersecurity, and Technology (H) Committee has work ongoing, there is no defined place to receive a referral.

Amann pointed out that the Innovation, Cybersecurity, and Technology (H) Committee is a newer Committee and did not exist when the Accelerated Underwriting (A) Working Group was created. She also explained that exam standards rely on having a model, but this issue is so prominent right now that these questions can help guide an examiner when they are doing an underwriting guideline review or looking at rate reviews. She said these questions help frame the kind of review an examiner would conduct.

Peter Kochenburger (University of Connecticut School of Law) said that the draft guidance document refers to prohibiting unfair discrimination but does not define it. He said there is a lot of debate about what “unfairly discriminatory” means, especially in the context of proxy discrimination. Van Buren explained that the guidance is based on state law, so what that term means is going to be consistent with the state’s laws that prohibit unfair discrimination. Birnbaum said that states differ in their understanding of unfair discrimination. In the context of life insurance, insurers have an unfortunate history of using certain occupations as a proxy for race. Whereas in property and casualty insurance, there is precedent for considering unfair discrimination to involve the violation of either actuarial standards or intentional use of race or other protective classes. He said unintentional discrimination or using a proxy for race in life insurance is unfair discrimination, and he does not understand why any state would not consider that to be unfair discrimination.

Commissioner Houdek proposed forwarding the referral to the Market Conduct Examination Guidelines (D) Working Group and exposing the draft guidance document for a formal 30-day comment period following this call. He said the plan is to have another open meeting to discuss any comments received before finalizing the guidance. Jennifer McAdam (American Council of Life Insurers—ACLI) said she was working on other responses to accelerated underwriting issues happening across the country and requested a longer comment period on the guidance document.

Commissioner Houdek agreed to expose the draft guidance document (Attachment Two-A) for a 45-day public comment period ending April 15.

Birnbaum requested a comment period for the referral since the guidance document references the referral, and any comments on the guidance document may implicate the referral. Commissioner Houdek agreed to expose the referral to the Market Conduct Examination Guidelines (D) Working Group (Attachment Two-B) for a 30-day public comment period ending March 24.

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

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**Draft January 25, 2023**

**Comments are requested by close of business Friday, April 14, 2023**

**Accelerated Underwriting (A) Working Group**
**Ad Hoc Drafting Subgroup**
**Regulatory Guidance and Considerations**

**Introduction**

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, including consideration of the ongoing work of the Life Actuarial (A) Task Force on the issue and, if appropriate, drafting guidance for the states."

A significant portion of the AUWG's work over the last three years 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 adopted by the Life Insurance and Annuities (A) Committee at the NAIC 2022 Spring National Meeting.

The AUWG's analysis and recommendations for life insurers and regulators included in the educational paper are based on 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 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.

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.

Below, 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 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 *Market Regulation Handbook* (MRH) (Attachment A). 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.

Finally, the AUWG understands that there are other NAIC groups working on similar or overlapping issues related to accelerated underwriting. The AUWG plans to coordinate with the following groups:

- **The Big Data and Artificial Intelligence (H) Working Group under the Innovation, Cybersecurity and Technology (H) Committee.**

The Big Data and Artificial Intelligence (H) (BDAI) Working Group has three charges:

A. Research the use of big data and artificial intelligence (AI) including machine learning (ML) in the business of insurance, and evaluate existing regulatory frameworks for overseeing and monitoring their use. Present findings and recommendations to the Innovation, Cybersecurity, and Technology (H) Committee including potential recommendations for development of model governance for the use of big data and AI including ML for the insurance industry.

B. Review current audit and certification programs and/or frameworks that could be used to oversee insurers' use of consumer and non-insurance data and models using intelligent algorithms including AI and in alignment with the NAIC AI Principles. If appropriate, issue recommendations and coordinate with the appropriate SME committees on the development of or modifications to model laws, regulations, handbooks, and regulatory guidance regarding data analysis, marketing, rating, underwriting and claims, regulation of data and model vendors, regulatory reporting requirements, and consumer disclosure requirements.

C. Assess data and regulatory tools needed for state insurance regulators to appropriately monitor the marketplace, and evaluate the use of big data, algorithms, and ML, including AI/ML in underwriting, rating, claims, and marketing practices This assessment shall include a review of currently available data and tools, as well as recommendations for development of additional data and tools, as appropriate. Based on this assessment, propose a means to include these tools in existing and/or new regulatory oversight and monitoring processes to promote consistent oversight and monitoring efforts across state insurance departments.

To achieve its charges, the BDAI Working Group formed 4 Workstreams:

- **Workstream 1** – focused on surveys of the industry related to their use of AI/ML systems. The survey of the life insurance industry has been piloted with a select few life insurers and the survey is in the final stages of revision and is expected to be sent to all life insurers in first quarter 2023.
- **Workstream 2** - focused on the appropriate regulatory evaluation to produce a recommended regulatory framework for monitoring and overseeing industry's use of third-party data and model vendors.
- **Workstream 3** – focused on gathering data and evaluating information from sources, including vendors, academics, industry, international supervisory authorities, on governance models/frameworks and software tools/resources, which could assist regulators in overseeing and monitoring industry's use of data and AI/ML and eliminate unintended bias in such use.
- **Workstream 4** – focused on evaluating how best to implement the expectations outlined in the *NAIC's Principles on Artificial Intelligence* and provide suggestions on next steps, which could include regulatory guidance or development of a model regulation and report back to the working group and ultimately the H Committee.

In addition, it is clear to the AUWG that additional regulations, model laws, data, processes, and tools are needed for DOIs to appropriately monitor the use of accelerated underwriting programs used by life insurers. Such additional regulations, model laws, data, processes, and tools should include regulating data and vendors that provide external consumer non-traditional, non-medical data and predictive models to insurers. In addition, they should mandate consumer disclosures related to insurers' use of such data in models using ML algorithms. The AUWG recommends that the Innovation Cybersecurity and Technology (H) Committee include the consideration of these potential regulations, models laws, data processes, and tools as part of its Committee's work.

The AUWG also believes that its work, including the regulatory guidance below and the referral to the Market Conduct Examination Guidelines (D) Working Group, may be useful to the Workstreams under the Big Data and Artificial Intelligence (H) Working Group.

In addition, the AUWG understands that any work that is completed by the Workstreams under the BDAI Working Group may be useful to incorporate into the regulatory guidance below along with any potential standard(s) developed by the Market Conduct Examination Guidelines (D) Working Group related to accelerated underwriting in life 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. Although this group is addressing a unique set of issues, it will require coordination, especially with regard to definitions.

**Regulatory Guidance**

Following the adoption of the educational paper, the AUWG continued its work on the second part of its charge: drafting a guidance document for DOIs to use when reviewing accelerated underwriting programs used by life insurers to ensure the programs are fair, transparent, and secure in compliance with existing law.

Making sure that the use of accelerated underwriting is fair to consumers is important because its use impacts both the availability 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. Lastly, insurers accessing sensitive consumer data have a duty to secure that data to protect consumers from the harm of unauthorized disclosure.

The AUWG developed the following regulatory considerations for DOIs when reviewing a life insurer's use of accelerated underwriting programs:

- Data inputs are transparent, accurate, reliable, and the data itself is evaluated for unfair bias.

- External data sources, algorithms or predictive models are based on sound actuarial principles, including a causal or 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.[1]
- Predictive models or machine learning algorithm(s) within accelerated underwriting accurately assess and price risk.
- Predictive models or machine learning algorithm(s) achieve an outcome that is not unfairly discriminatory.
- 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 insurer establishes and follows procedures to protect the consumer's privacy and the consumer's data.
- The insurer has a mechanism in place to correct mistakes if found in consumer data.
- The insurer will produce information upon request as part of regular filing submission reviews or market conduct examinations.
- The insurer has procedures in place to address the following requirements pertaining to the consumer: Notice Requirements, Opting-Out of Data Sharing, Correcting or Deleting Information, Data Portability, and Restricting the use of Data.

Using these regulatory expectations as a baseline for review, DOIs may:

- Review a life insurer's initial submission of policy filings to confirm the proper use of data elements.
- Request a life insurer provide and/or file accelerated underwriting data sources, predictive models, and algorithms and/or summaries for analysis.
- Request a life insurer provide additional information and/or explanation about how a particular predictive model or machine learning algorithm is used in an accelerated underwriting program.
- 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.
- 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.

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

- What specific external data or information about life insurance applicants is being utilized by the accelerated underwriting program?
- How does the company obtain any external data or information used as part of its life insurance accelerated underwriting program?
- Explain 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 is used in the accelerated underwriting program.

[1] 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."

- Ask for a copy of all company disclosures provided to applicants regarding the company's accelerated underwriting program.
- What process or recourse does the company provide to applicants for life insurance should they receive an adverse underwriting decision?
- What process or recourse does the company provide to applicants for life insurance to correct mistakes in the external data or information?
- How is external data or information about life applicants utilized, stored, and destroyed after the completion of the underwriting process?
- How does the company audit data sets, predictive models, and machine learning algorithms to ensure accuracy, reliability, and outcomes insurance that are not unfairly discriminatory?
- How often does the company perform audits?
- Does the company perform audits internally or does it utilize a third-party to perform independent audits?
- Has the company modified its predictive models or machine learning algorithms, or the data sets used by the models and algorithms, as a result of an audit? If so, what modifications were made and why?
- Ask the company to provide a copy of audit results.
- How does the company ensure that the model(s) it uses are based on sound actuarial principles?
- 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, including the referral to the Market Conduct Examination Guidelines (D) Working Group and the results of the BDAI Working Group Workstream 1 life insurance survey will lead to additional guidance regarding accelerated underwriting in life insurance.

Draft 1-11-23
Comments are requested by close of business Friday, March 24, 2023

**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: January ?, 2023

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 education paper that was adopted by the Life Insurance and Annuities (A) Committee on April 7, 2022. The AUWG continues its work to draft guidance for the states reviewing life insurers' use of accelerated underwriting. As part of that work, the AUWG makes this referral to the Market Conduct Examination Guidelines (D) Working Group to include additional guidance in the NAIC's *Market Regulation Handbook* (MRH) that will address questions involving accelerated underwriting in life insurance. The AUWG believes that adding additional explanation and review criteria about 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 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, in particular the state equivalent to the *Unfair Trade Practices Act* (#880)[1], to ensure that these accelerated underwriting programs are not unfairly discriminatory.

The AUWG recommends that a new standard be included in Chapter 23 – Conducting the Life and Annuity Examination related to a life insurer's use of big data, artificial intelligence, and machine learning to underwrite life insurance. The applicable standard should address how accelerated underwriting programs used by life insurers are fair, transparent, and secure. The types of documents to be reviewed by examiners should include policy rates and forms, accelerated underwriting models and/or summaries of those models, information about source data used as part of the accelerated underwriting program, consumer disclosures, and testing and/or auditing policies and procedures of the models.

[1] See Section 4G(1) Unfair Discrimination. Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any life insurance policy or annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such policy.

Review procedures and criteria should include the following:

- Ensure data is fair. Determine if the company has policies in place for and regularly performs audits of its data sets, predictive models, and machine learning algorithms to ensure data inputs are accurate and reliable, and do not result in unfairly discriminatory outcomes. Determine if the predictive model(s) and machine learning algorithms are based on sound actuarial principles.
- Ensure data use is transparent. Determine if the company discloses to applicants for life insurance the external information used in its accelerated underwriting program and how that external information is used in the accelerated underwriting program. Determine if the company provides a process or recourse to applicants for life insurance if they receive an adverse underwriting decision. Determine if the company provides applicants for life insurance an opportunity to correct mistakes in external data or information used in the accelerated underwriting program.
- Ensure data is secure. Determine how external data or information about life insurance applicants is utilized, stored, and destroyed by the company after the completion of the underwriting process.

The AUWG defers to the Market Conduct Examination Guidelines (D) Working Group regarding whether any updates to the MRH should be made to the chapter pertaining to life insurance as recommended above, or should be included in a chapter that deals specifically with the use of big data, algorithms, and machine learning by insurers generally. The AUWG looks forward to working with the Market Conduct Examination Guidelines (D) Working Group to draft the recommended changes to the MRH.