Draft date: 8/6/24

2024 Summer National Meeting
Chicago, Illinois

LIFE INSURANCE AND ANNUITIES (A) COMMITTEE
Wednesday, August 14, 2024
3:00 – 4:00 p.m.
McCormick Place Convention Center—Grand Ballroom—Level 1

ROLL CALL

Judith L. French, Chair	Ohio	Grace Arnold	Minnesota
Doug Ommen, Co-Vice Chair	Iowa	Justin Zimmerman	New Jersey
Carter Lawrence, Co-Vice Chair	Tennessee	Adrienne A. Harris	New York
Mark Fowler	Alabama	Glen Mulready	Oklahoma
Peni Itula Sapini Teo	American Samoa	Elizabeth Kelleher Dwyer	Rhode Island
Barbara D. Richardson	Arizona	Scott A. White	Virginia
Karima M. Woods	District of Columbia	Nathan Houdek	Wisconsin

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

AGENDA

1. Consider Adoption of its July 15 Minutes
   —*Director Judith L. French (OH)*

2. Hear a Federal Update—*Taylor Walker (NAIC)*

3. Consider Adoption of the Life Actuarial (A) Task Force Report
   —*Rachel Hemphill (TX)*

4. Consider Adoption of the Accelerated Underwriting (A) Working Group Report—*Commissioner Nathan Houdek (WI)*

5. Hear a Panel Presentation on Illustrations—*Fred Andersen (MN)*

6. Receive an Update on the Special (EX) Committee on Race and Insurance's Life Workstream—*Commissioner Mark Fowler (AL)*

7. Discuss Any Other Matters Brought Before the Committee
   —*Director Judith L. French (OH)*

8. Adjournment

© 2024 National Association of Insurance Commissioners

Draft: 8/5/24

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

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

1. Adopted its Spring National Meeting Minutes

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

2. Adopted the 2025 *Valuation Manual* Amendments

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

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

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

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

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

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

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

Virtual Meetings

ACCELERATED UNDERWRITING (A) WORKING GROUP
August 6, 2024 / July 11, 2024 / June 13, 2024 / April 3, 2024

Summary Report

The Accelerated Underwriting (A) Working Group met Aug. 6, July 11, June 13, and April 3. During its meetings, the Working Group:

1. Agreed to a work plan for completing a guidance document for state insurance regulators on accelerated underwriting (AU) in life insurance, along with a draft referral to the Market Conduct Examination Guidelines (D) Working Group to consider adding specific guidance to the *Market Regulation Handbook*.

2. Reviewed drafts of the *Accelerated Underwriting in Life Insurance Regulatory Guidance and Considerations* and *Market Regulation Handbook* referral.

3. Discussed comments received on the draft *Accelerated Underwriting in Life Insurance Regulatory Guidance and Considerations*.

4. Adopted the draft A*ccelerated Underwriting in Life Insurance Regulatory Guidance and Considerations* and the referral to the Market Conduct Examination Guidelines (D) Working Group.

© 2023 National Association of Insurance Commissioners

Draft: 8/7/24

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

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

1. Adopted its July 11 Minutes

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

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

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

Gendron made a motion, seconded by Gillaspey, to adopt the July 11 draft regulatory guidance and considerations document (Attachment X) and the June 3 *Market Regulation Handbook* referral (Attachment X). The motion passed unanimously.

3. Discussed its Next Steps

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

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

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

© 2024 National Association of Insurance Commissioners

Draft: 8/2/24

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

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

1. Adopted its June 13 and April 3 Minutes

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

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

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

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

A. Discussed Introduction

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

© 2024 National Association of Insurance Commissioners

B. Discussed Regulatory Considerations A(2)

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

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

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

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

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

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

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

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

C. Discussed Regulatory Considerations A(5)

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

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

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

The ACLI suggested the following revisions:

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

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

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

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

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

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

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

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

D. Discussed Regulatory Considerations A(6)

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

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

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

The ACLI proposed the following revisions:

> "6. ~~The insurer establishes and follows procedures to protect the consumer's privacy and the consumer's data.~~ The insurer's existing procedures to protect consumer privacy and consumer data apply equally when accelerated underwriting is utilized."

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

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

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

E. Discussed Regulatory Considerations A(7)

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

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

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

The ACLI suggested the following revisions:

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

And could also include:

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

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

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

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

> "7. The insurer has a mechanism in place to correct mistakes confirmed by records ~~if~~ found in consumer data.
>
> 8. The insurer has a process in place to assist a consumer in contacting the originator of a record that the consumer believes to be incorrect."

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

F. Discussed Regulatory Considerations A(9)

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

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

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

The ACLI suggested the following revisions:

> "9. The insurer has procedures in place to address ~~the following requirements pertaining to the~~ consumer issues, ~~:~~ including ~~N~~notice ~~R~~requirements~~, Opting-Out of~~ and use/restrictions on ~~Data Sharing, Correcting or Deleting Information, Data Portability, and Restricting the use of D~~data consistent with applicable insurance privacy and other existing laws."

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

Commissioner Houdek suggested the following revisions:

> "9. The insurer has procedures in place ~~to address the following requirements~~ pertaining to ~~the~~ consumer ~~: N~~notice ~~R~~requirements~~, Opting-Out of~~ and use/restrictions on ~~Data Sharing, Correcting or Deleting Information, Data Portability, and Restricting the use of D~~consumer data, consistent with applicable state and federal laws and regulations."

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

G. Discussed Strategies for Review B(6)

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

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

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

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

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

> "3. Explain ~~in detail~~ how the company's ~~discloses to applicants~~ authorization for life insurance ~~what external~~ includes information ~~is used in its Accelerated Underwriting program and how this external information actually is~~that may be used in an~~the~~ Accelerated Underwriting program.
>
> 7. How is external data or information about life applicants ~~utilized, stored, and destroyed after the completion of the underwriting process~~managed consistent with applicable privacy and other related laws and regulations?"

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

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

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

> "3. Explain and document in detail how the company discloses to applicants for life insurance what external information is used in its Accelerated Underwriting program and how this external information actually is used in the Accelerated Underwriting program.
> 7. How is external data or information about life applicants utilized, stored~~, and destroyed~~ after the completion of the underwriting process, and ultimately destroyed?"

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

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

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

Draft: 6/24/24

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

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

1. Exposed the Revised AU Guidance Document and Referral

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

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

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

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

© 2024 National Association of Insurance Commissioners

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

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

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

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

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

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

SharePoint/NAIC Support Staff Hub/Member Meetings/A Cmte /AUWG/AUWG min 6-13-23 final

Draft: 4/8/24

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

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

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

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

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

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

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

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

© 2024 National Association of Insurance Commissioners

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

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

PROJECT HISTORY

ACCELERATED UNDERWRITING IN LIFE INSURANCE REGULATORY GUIDANCE AND CONSIDERATIONS

1. Description of the Project, Issues Addressed, etc.

The *Accelerated Underwriting in Life Insurance Regulatory Guidance and Considerations* is for state departments of insurance (DOIs) to use when reviewing life insurers' use of accelerated underwriting programs. The regulatory guidance is designed to provide a framework for state insurance regulators to reference and is divided into three areas of focus: 1) regulatory considerations; 2) strategies for review; and 3) requests for information.

2. Name of Group Responsible for Drafting the Model and States Participating

Members of the Accelerated Underwriting (A) Working Group were: Nathan Houdek, Chair, and Lauren Van Buren (WI); Grace Arnold, Vice Chair, and Sarah Gillaspey (MN); Jason Lapham (CO); Russ Gibson (IA); Cynthia Amann (MO); Maggie Reinert and Megan VanAusdall (NE); Ross Hartley (ND); Daniel Bradford (OH); Matt Gendron (RI); and David Hippen (WA).

A drafting group, which included Jason Lapham (CO), Russ Gibson (IA), Nour Benchaaboun (MD), Cynthia Amann (MO), Sarah Gillaspey (MN), Ross Hartley (ND), Daniel Bradford (OH), Matt Gendron and Mariel Garcia (RI), and Lauren Van Buren (WI), prepared drafts that were reviewed and discussed on open calls. NAIC staff from other NAIC groups working on related issues also participated, including: Dorothy Andrews, Miguel Romero, and Scott Sobel.

3. Project Authorized by What Charge and Date First Given to the Group

The Accelerated Underwriting (A) Working Group was created by the Life Insurance and Annuities (A) Committee at the NAIC 2019 Summer National Meeting and charged 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."

At the 2022 Summer National Meeting, the Life Insurance and Annuities (A) Committee adopted the Accelerated Underwriting (A) Working Group's educational report. At that meeting, the Committee agreed that the Working Group would begin the second part of its charge to draft regulatory guidance.

4. A General Description of the Drafting Process (e.g., drafted by a subgroup, interested parties, the full group, etc). Include any parties outside the members that participated

Following the adoption of the educational report by the Accelerated Underwriting (A) Working Group at the 2022 Summer National Meeting, a drafting group of state insurance regulators started meeting to consider specific guidance for state insurance regulators on accelerated underwriting in life insurance. As it looked to develop specific guidance, the drafting group identified market conduct as one of the areas where additional guidance could be helpful and prioritized coordinating with other NAIC groups, such as the Collaboration Forum initiative under the Innovation, Cybersecurity, and Technology (H) Committee; the Market Conduct Examination Guidelines (D) Working Group; the Big Data and Artificial Intelligence (H) Working Group; and others. The drafting group received feedback from NAIC staff and state insurance regulators involved with other NAIC groups regarding the Committee's approach and efforts to ensure consistency and coordination.

During a meeting on Feb. 22, 2023, the Accelerated Underwriting (A) Working Group exposed a Jan. 25 draft of the *Accelerated Underwriting in Life Insurance Regulatory Guidance and Considerations* document for a public comment period ending April 13, 2023. Comments were received from the American Council of Life Insurers (ACLI), the Center for Economic Justice (CEJ), the Center for Insurance Research (CIR), and the Connecticut Department of Insurance.

© 2024 National Association of Insurance Commissioners

A Jan. 11 draft referral to the Market Conduct Examination Guidelines (D) Working Group was exposed for a public comment period ending March 24, 2023. Comments were received from the CEJ.

Following this initial exposure period, to avoid potential conflicts and duplication of efforts, the Working Group put the guidance document and referral on hold pending the completion of work by the Innovation, Cybersecurity, and Technology (H) Committee and its Big Data and Artificial Intelligence (H) Working Group. The *Model Bulletin on the Use of Artificial Intelligence Systems by Insurers* was adopted in December 2023. The survey on the use of artificial intelligence (AI)/machine learning (ML) by life insurers was completed, and a report was issued in December 2023.

During a meeting on April 3, 2024, the Accelerated Underwriting (A) Working Group, proposed a work plan for finalizing the regulatory guidance and referral by the 2024 Summer National Meeting. A small drafting group met bi-weekly to review the January 2023 draft of the regulatory guidance and referral to make revisions in light of the model bulletin and survey. On June 13, the Accelerated Underwriting (A) Working Group met to review a revised June 3 draft of the regulatory guidance document and referral. The June 3 draft was exposed for comment until June 30. Comment letters on the regulatory guidance were submitted by ACLI and NAIC consumer representatives. The Accelerated Underwriting (A) Working Group met on July 11 to discuss the comments received and revise the draft. A July 11 draft of the regulatory guidance document was exposed for another comment period to ensure that there were no lingering issues or mistakes of fact. A comment letter was submitted by NAIC consumer representatives.

The Accelerated Underwriting (A) Working Group met Aug. 6, 2024, and unanimously adopted the July 11 draft of the *Accelerated Underwriting in Life Insurance Regulatory Guidance and Consideration* and the June 3 market regulation referral.

5. A General Description of the Due Process (e.g., exposure periods, public hearings, or any other means by which widespread input from industry, consumers, and legislators was solicited)

Five open meetings were held specifically for the guidance document and referral. All drafts were posted to the Accelerated Underwriting (A) Working Group web page on the NAIC website. Public comments were solicited and posted on the Working Group webpage.

6. A Discussion of the Significant Issues (items of some controversy raised during the due process and the group's response)

Every effort was made to listen to the concerns of all interested parties in order to develop a helpful resource for state insurance regulators as they review life insurers' use of accelerated underwriting. The goal is to ensure that accelerated underwriting programs are fair, transparent, safe, secure, and in compliance with existing law. Making sure that the use of accelerated underwriting is fair to consumers is important because its use impacts the availability, access, and affordability of life insurance to consumers. Ensuring that insurers use accelerated underwriting in a transparent manner is important because consumers should understand what personal data is being accessed by insurers and how that data is being used. Insurers accessing sensitive consumer data have a duty to secure that data to protect consumers from the harm of unauthorized disclosure. Finally, it is critical that insurers' use of accelerated underwriting is in compliance with all applicable insurance laws and regulations.

7. List the key provisions of the model (sections considered most essential to state adoption)

N/A

8. Any Other Important Information (e.g., amending an accreditation standard)

N/A

© 2024 National Association of Insurance Commissioners

Adopted by the Accelerated Underwriting (A) Working Group on August 6, 2024

Accelerated Underwriting in Life Insurance
Regulatory Guidance and Considerations

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

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

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

© 2024 National Association of Insurance Commissioners

Regulatory Guidance

A) Regulatory Considerations

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

1. Data inputs are transparent, accurate, reliable, and the data itself is evaluated for potential unfair discrimination.

2. External data sources, Algorithms[2] or Predictive Models[3] are based on sound actuarial principles, including a rational explanation why a rating variable or combination of variables is correlated to expected loss or expense, and why that correlation is consistent with the expected direction of the relationship.[4]

3. Predictive Models or Machine Learning[5] Algorithm(s) within Accelerated Underwriting accurately assess and price risk.

4. Predictive Models or Machine Learning Algorithm(s) achieve an outcome that is not unfairly discriminatory.

5. Reason(s) for an Adverse Underwriting Decision,[6] along with information upon which the insurer based its Adverse Underwriting Decision, are provided to the consumer in language understandable by the typical consumer and consistent with applicable state and federal laws and regulations.

---

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

[2] For purposes of this Regulatory Guidance, "Algorithm" has the meaning set forth in the AI Model Bulletin (*See* Appendix 4).

[3] For purposes of this Regulatory Guidance, "Predictive Model" has the meaning set forth in the AI Model Bulletin (*See* Appendix 4).

[4] 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."

[5] For purposes of this Regulatory Guidance, "Machine Learning" has the meaning set forth in the AI Model Bulletin (*See* Appendix 4).

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

© 2024 National Association of Insurance Commissioners

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

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

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

8. The insurer will produce information upon request as part of regular filing submission reviews or market conduct examinations or actions.

9. The insurer has procedures in place to address consumer notice requirements anduse/restrictions on consumer data, consistent with applicable state and federal laws and regulations.

B) Strategies for Review

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

1. Review a life insurer's underwriting programs/guidelines to confirm the proper use of data elements.

2. Request a life insurer provide Accelerated Underwriting data sources, Predictive Models, and Algorithms or summaries for analysis.

3. Request a life insurer provide additional information about how a particular Predictive Model or Machine Learning Algorithm is used in an Accelerated Underwriting program.

4. Request a life insurer provide information about source data used as part of its Accelerated Underwriting programs regardless of whether the data or score is provided by a third party or via a model.

5. Request a life insurer provide information about its auditing of data sets, Predictive Models, and Machine Learning Algorithms to ensure they are accurate, reliable, and do not result in unfairly discriminatory outcomes.

C) Requests for Information

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

© 2024 National Association of Insurance Commissioners

1. What specific external data or information about life insurance applicants is being utilized by the Accelerated Underwriting program?

2. How does the company obtain any external data or information used as part of its life insurance Accelerated Underwriting program?

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

4. Ask for a copy of all company disclosures provided to applicants regarding the company's Accelerated Underwriting program.

5. What process or recourse does the company provide to an applicant for life insurance should they receive an Adverse Underwriting decision based on external data or information?

6. What process or recourse does the company provide to applicants for life insurance to correct mistakes in the external data or information?

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

8. How does the company validate, test, and/or audit data sets, Predictive Models, and Machine Learning Algorithms for accuracy and reliability, and for potential Adverse Consumer Outcomes[7]?

9. Does the company validate, test, and/or audit data sets, Predictive Models, and Machine Learning Algorithms internally or does it utilize a third-party to perform these functions?

10. How does the company ensure that the model(s) it uses are based on sound actuarial principles?

11. How does the company address potential unfair discrimination by ensuring that external consumer data's correlation to risk is not outweighed by any correlation to a protected class(es).

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

Background

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

© 2024 National Association of Insurance Commissioners

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

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

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

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

Also, the AUWG is making a referral (Appendix 2) to the Market Conduct Examination Guidelines (D) Working Group of the Market Regulation and Consumer Affairs (D) Committee with suggested additions to the NAIC's *Market Regulation Handbook* (MRH). The AUWG has concluded that it would be beneficial to include additional guidance in the NAIC's MRH that addresses questions involving Accelerated Underwriting in life insurance.

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

From 2020:

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

On August 14, 2020, the NAIC membership adopted the *NAIC Principles on AI* (AI Principles) (Appendix 3). These AI Principles apply to insurance companies and all persons or entities facilitating the business of insurance that play an active role in the AI system life cycle, including third parties such as rating, data providers and advisory organizations (AI actors). The purpose of the principles is to inform and establish general expectations for AI actors and systems,

© 2024 National Association of Insurance Commissioners

emphasizing the importance of developing AI systems that are fair and ethical, accountable, compliant with insurance laws and regulations, transparent, and safe, secure, and robust. Both the educational paper and this regulatory guidance and referral rely on the expectations articulated in the AI Principles.[8]

From 2021:

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

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

From 2022:

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

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

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

The AUWG believes that the MCAS definition is consistent with the more detailed definition of Accelerated Underwriting that informed the educational paper.[9] Given that the AUWG regulatory guidance is contemplated for use by insurance departments during market conduct reviews and

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

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

© 2024 National Association of Insurance Commissioners

for inclusion in the MRH, the AUWG uses the MCAS definition for purposes of its regulatory guidance document to avoid any unintended confusion.

From 2023[10]:

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

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

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

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

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

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

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

© 2024 National Association of Insurance Commissioners

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

In 2024 and ongoing…

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

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

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

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

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

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

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

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

The Privacy Protections (H) Working Group is working on replacing the NAIC's Insurance Information and Privacy Protection Model Act (#670) and the Privacy of Consumer Financial and

© 2024 National Association of Insurance Commissioners

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

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

© 2024 National Association of Insurance Commissioners

DRAFT March 4, 2022
Adopted by the Life Insurance and Annuities (A) Committee on April 7, 2022
Adopted by Accelerated Underwriting Working Group on March 24, 2022

Accelerated Underwriting (A) Working Group
Ad Hoc Drafting Subgroup

TABLE OF CONTENTS

I. Introduction

II. Procedural background of the Working Group and its Charge – Address presentations we received about current accelerated underwriting practices in life insurance.

III. What is accelerated underwriting and put it in context of traditional underwriting
   A. What is accelerated underwriting
      1. What is a predictive model
      2. What is a machine learning algorithm
   B. What is traditional underwriting
   C. What is simplified underwriting
   D. How is accelerated underwriting similar and different from traditional underwriting and simplified underwriting

   E. How prevalent is accelerated underwriting
   F. Trends for the future
   G. Recommendations
IV. Discussion of issues and recommendations
   A. Input data
      1. Traditional data
      2. Non-traditional data
      3. Fair Credit Reporting Data (FCRA) data
      4. Discussion of bias in input data
      5. Recommendations

   B. Data Privacy

Conclusion

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

Resources

© 2022 National Association of Insurance Commissioners

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.[1] Machine learning algorithms are a process or set of 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 process and requires less

[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.

[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.

© 2022 National Association of Insurance Commissioners

consumer involvement in the purchase, improves the underwriting experience for consumers, shortens issue times, and increases policy acceptance rates. [3]

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[4], the use of accelerated underwriting in life insurance should be fair and transparent to regulators, consumers, and policymakers. Companies must operate in compliance with applicable laws, and the process and data companies use need to be secure. To accomplish these objectives, regulators should dialogue with consumers, life insurers, and third-party vendors to determine if consumer data is being used in problematic or unfair ways or generating unfair outcomes.

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

- Take steps to ensure data inputs are transparent, accurate, reliable, and the data itself does not have any unfair bias.
- Ensure that the use of external data sources, algorithms or predictive models are based on sound actuarial principles with a valid explanation or rationale for any claimed correlation or causal connection.
- Ensure that the predictive models or machine learning algorithm within accelerated underwriting has an intended outcome and that outcome is being achieved.
- Ensure that the predictive models or machine learning algorithm achieve an outcome that is not unfairly discriminatory.

---

[3] Presentations to Accelerated Underwriting (A) Working Group between Dec. 8, 2018, and Sept. 24, 2020.

[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.

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

Input data

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

Traditional Data

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

- Application data, e.g., medical records, prescription questions, vocation questions, financial profile
- Tele-interview
- Medical records
- Data from the MIB (formerly known as Medical Information Bureau) [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.

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

© 2022 National Association of Insurance Commissioners

- State statutes and case laws were developed based on the use of traditional data containing consumer protections created under the assumption that this was the type of data collected or reviewed during an underwriting process.
- Presentations made to the Working Group represented that time and costs associated with obtaining and reviewing traditional data are significant.

Non-traditional Data

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

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

Considerations for use of Non-traditional Data

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

FCRA Data

Some data[7] 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[8],
(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.

[7] FCRA applies to consumer reports. Please see 15 U.S. Code § 1681a(d).
[8] 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).

© 2022 National Association of Insurance Commissioners

Considerations for use of data subject to FCRA:

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

Recommendations

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

Specifically, examiners may:

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

Form and rate reviewers may:

- Request that the life insurer provides information about how a predictive model or machine learning algorithm will be used.
- Consider requiring the filing of models used to analyze data.
- Consider questioning the extent to which data elements correlate to applicant risk.
- Request information about source data regardless of whether the data or score is provided by a third party.

Life insurers and third-party vendors have a responsibility to understand the data they are using. To accomplish this, life insurers should conduct post-issue audits and data analysis and make these audits and analysis available to regulators upon request. For example, analyses such as evaluating claims and lapse rates may be helpful. Life insurers and third-party vendors should ensure data inputs are accurate and reliable.

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

Data Privacy

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

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

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:[10]

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

[9] 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.

[10] For purposes of the Working Group's paper, the use of the term "right" should be read as a basic protection, or, denoting access to making a request and not as a guarantee of having the requested right acted upon in the manner as the consumer requests.

6) Right to restrict the use of data[11]

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.

[11] 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).[12]

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

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

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

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

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

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

---

[12] *See* NAIC Proceedings – Spring 2019, Innovation and Technology (EX) Task Force, Attachment Two.

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

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

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

Artificial Intelligence/Machine Learning (AI/ML)

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

Artificial Intelligence / Machine Learning Systems include:

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

Artificial Intelligence / Machine Learning Systems are not:

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

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

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

AI/ML Use Descriptions and/or Explanations

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

Appendix 2

MEMORANDUM

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

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

DATE:

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

---

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

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

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

[1] See list of related work product in the Background section of the *Accelerated Underwriting in Life Insurance Regulatory Guidance* document.

© 2024 National Association of Insurance Commissioners

following NAIC Models provide legislative authority for specific inquiry into insurer practices involving AI Systems, including accelerated underwriting in life insurance:

> *Unfair Trade Practices Act* (#880) defines practices that constitute unfair methods of competition or unfair or deceptive acts and practices and prohibits the trade practices so defined or determined.
>
> *Unfair Claims Settlement Practices Model Act (#900)* sets forth standards for the investigation and disposition of claims arising under policies or certificates of insurance.
>
> *Corporate Governance Annual Disclosure Model Act (#305)*: requires insurers to report on governance practices and to provide a summary of the Insurer's corporate governance structure, policies, and practices. The content, form, and filing requirements for a Corporate Governance Annual Disclosure (CGAD) are set forth in the Corporate Governance Annual Disclosure Model Regulation (#306)

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

© 2024 National Association of Insurance Commissioners

Adopted by the Executive (EX) Committee and Plenary, Aug. 14, 2020
Adopted by the Executive (EX) Committee, Aug. 13, 2020
Adopted by the Innovation and Technology (EX) Task Force, Aug. 7, 2020

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

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

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

Further, **THIS DOCUMENT**

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

Fair and Ethical

a. AI actors should respect the rule of law throughout the AI life cycle. This includes, but is not limited to, insurance laws and regulations, such as those relating to trade practices, unfair discrimination, access to insurance, underwriting, privacy, consumer protection and eligibility practices, ratemaking standards, advertising decisions, claims practices, and solvency.

b. Consistent with the risk-based foundation of insurance, AI actors should proactively engage in responsible stewardship of trustworthy AI in pursuit of beneficial outcomes for consumers and to avoid proxy discrimination against protected classes. AI systems should not be designed to harm or deceive people and should be implemented in a manner that avoids harmful or unintended consequences and corrects and remediates for such consequences when they occur.

© 2020 National Association of Insurance Commissioners

Accountable

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

Compliant

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

Transparent

a. For the purpose of improving the public's confidence in AI, AI actors should commit to transparency and responsible disclosures regarding AI systems to relevant stakeholders. AI actors must have the ability to protect confidentiality of proprietary algorithms, provided adherence to individual state law and regulations in all states where AI is deployed can be demonstrated. These proactive disclosures include revealing the kind of data being used, the purpose of the data in the AI system and consequences for all stakeholders.

b. Consistent with applicable laws and regulations, stakeholders (which includes regulators and consumers) should have a way to inquire about, review and seek recourse for AI-driven insurance decisions. This information should be easy-to-understand and describe the factors that lead to the prediction, recommendation or decision. This information may be presented differently and should be appropriate for applicable stakeholders.

Secure, Safe and Robust

a. AI systems should be robust, secure and safe throughout the entire life cycle so that in conditions of normal or reasonably foreseeable use, or adverse conditions, they can function in compliance with applicable laws and regulations. To this end, AI actors should ensure a reasonable level of traceability in relation to datasets, processes and decisions made during the AI system life cycle. AI actors should enable analysis of the AI system's outcomes, responses and other insurance-related inquiries, as appropriate in keeping with applicable industry best practices and legal requirements.

b. AI actors should, based on their roles, the situational context and their ability to act, apply a systematic risk management approach to each phase of the AI system life cycle on a continuous basis to address risks related to AI systems, including privacy, digital security and unfair discrimination as defined by applicable laws and regulations.

W:\National Meetings\2020\Summer\Plenary\AI principles as Adopted by the TF_0807.docx

APPENDIX 4

Draft: 12/2/2023

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

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

NAIC MODEL BULLETIN:

USE OF ARTIFICIAL INTELLIGENCE SYSTEMS BY INSURERS

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

FROM: [Department/Commissioner]

DATE: [Insert]

RE: The Use of Artificial Intelligence Systems in Insurance

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

SECTION 1: INTRODUCTION, BACKGROUND, AND LEGISLATIVE AUTHORITY

Background

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

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

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

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

© 2023 National Association of Insurance Commissioners

Legislative Authority

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

- ***Unfair Trade Practices Model Act* (#880)**: The *Unfair Trade Practices Act* [*insert citation to state statute or regulation corresponding to Model #880]* (UTPA), regulates trade practices in insurance by: 1) defining practices that constitute unfair methods of competition or unfair or deceptive acts and practices; and 2) prohibiting the trade practices so defined or determined.

- ***Unfair Claims Settlement Practices Model Act* (#900)**: The *Unfair Claims Settlement Practices Act*, [*insert citation to state statute or regulation corresponding to Model #900*] (UCSPA), sets forth standards for the investigation and disposition of claims arising under policies or certificates of insurance issued to residents of [insert state].

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

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

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

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

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

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

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

SECTION 2: DEFINITIONS

For the purposes of this bulletin the following terms are defined[1]:

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

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

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

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

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

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

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

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

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

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

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

© 2023 National Association of Insurance Commissioners

SECTION 3: REGULATORY GUIDANCE AND EXPECTATIONS

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

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

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

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

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

<u>AIS Program Guidelines</u>

1.0 General Guidelines

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

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

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

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

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

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

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

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

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

2.0 Governance

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

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

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

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

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

b) Scope of responsibility and authority, chains of command, and decisional hierarchies.

c) The independence of decision-makers and lines of defense at successive stages of the AI System life cycle.

d) Monitoring, auditing, escalation, and reporting protocols and requirements.

e) Development and implementation of ongoing training and supervision of personnel.

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

3.0 Risk Management and Internal Controls

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

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

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

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

a) Inventories and descriptions of the Predictive Models.

b) Detailed documentation of the development and use of the Predictive Models.

c) Assessments such as interpretability, repeatability, robustness, regular tuning, reproducibility, traceability, model drift, and the auditability of these measurements where appropriate.

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

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

3.6 Data and record retention.

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

4.0 Third-Party AI Systems and Data

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

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

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

a) Provide audit rights and/or entitle the Insurer to receive audit reports by qualified auditing entities.

b) Require the third party to cooperate with the Insurer with regard to regulatory inquiries and investigations related to the Insurer's use of the third-party's product or services.

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

SECTION 4: REGULATORY OVERSIGHT AND EXAMINATION CONSIDERATIONS

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

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

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

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

a) The written AIS Program.

b) Information and documentation relating to or evidencing the adoption of the AIS Program.

c) The scope of the Insurer's AIS Program, including any AI Systems and technologies not included in or addressed by the AIS Program.

d) How the AIS Program is tailored to and proportionate with the Insurer's use and reliance on AI Systems, the risk of Adverse Consumer Outcomes, and the Degree of Potential Harm to Consumers.

e) The policies, procedures, guidance, training materials, and other information relating to the adoption, implementation, maintenance, monitoring, and oversight of the Insurer's AIS Program, including:

i. Processes and procedures for the development, adoption, or acquisition of AI Systems, such as:

(1) Identification of constraints and controls on automation and design.

(2) Data governance and controls, any practices related to data lineage, quality, integrity, bias analysis and minimization, suitability, and Data Currency.

ii. Processes and procedures related to the management and oversight of Predictive Models, including measurements, standards, or thresholds adopted or used by the Insurer in the development, validation, and oversight of models and AI Systems.

iii. Protection of non-public information, particularly consumer information, including unauthorized access to Predictive Models themselves.

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

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

a) Documentation relating to or evidencing the formation and ongoing operation of the Insurer's coordinating bodies for the development, use, and oversight of AI Systems.

b) Documentation related to data practices and accountability procedures, including data lineage, quality, integrity, bias analysis and minimization, suitability, and Data Currency.

c) Management and oversight of Predictive Models and AI Systems, including:

i. The Insurer's inventories and descriptions of Predictive Models, and AI Systems used by the Insurer to make or support decisions that can result in Adverse Consumer Outcomes.

ii. As to any specific Predictive Model or AI System that is the subject of investigation or examination:

(1) Documentation of compliance with all applicable AI Program policies, protocols, and procedures in the development, use, and oversight of Predictive Models and AI Systems deployed by the Insurer.

(2) Information about data used in the development and oversight of the specific model or AI System, including the data source, provenance, data lineage, quality, integrity, bias analysis and minimization, suitability, and Data Currency.

(3) Information related to the techniques, measurements, thresholds, and similar controls used by the Insurer.

d) Documentation related to validation, testing, and auditing, including evaluation of Model Drift to assess the reliability of outputs that influence the decisions made based on Predictive Models. Note that the nature of validation, testing, and auditing should be reflective of the underlying components of the AI System, whether based on Predictive Models or Generative AI.

2. Third-Party AI Systems and Data

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

2.1 Due diligence conducted on third parties and their data, models, or AI Systems.

2.2 Contracts with third-party AI System, model, or data vendors, including terms relating to representations, warranties, data security and privacy, data sourcing, intellectual property rights, confidentiality and disclosures, and/or cooperation with regulators.

2.3 Audits and/or confirmation processes performed regarding third-party compliance with contractual and, where applicable, regulatory obligations.

2.4 Documentation pertaining to validation, testing, and auditing, including evaluation of Model Drift.

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

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

APPENDIX 5

MEMORANDUM

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

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

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

Date: November 30, 2023

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

---

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

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

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

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

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

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

SURVEY ANALYSIS SUMMARY

Artificial Intelligence/Machine Learning Model Use by Companies

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

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

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

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

MODELS BY INSURER OPERATION

Marketing

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

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

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

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

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

Pricing and Underwriting

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

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

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

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

Risk Management

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

DATA ELEMENTS BY INSURER OPERATIONS

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

Among these specific elements:

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

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

CUSTOMER DATA CORRECTION

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

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

Consumer Opportunity to Challenge or Correct Data

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

GOVERNANCE

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

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

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

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

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

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

THIRD-PARTY DATA SOURCES AND MODELS

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

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

CONCLUSION/NEXT STEPS

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

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

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

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

APPENDIX 6

Summary Chart of Life Insurance AI/ML Survey Results

AI/ML Usage Status	Co. CNT
Currently Using	76
Planning to Use	8
Exploring Use	10
None of the Above	67
Excluded Companies	18
Total No. of Companies	**179**

Comments on Survey

The following is a summary of the company counts for various uses of AI/ML. Not all the questions applied to every company based on screening questions reflected in the survey. To gain a complete understanding of the responses, you may view the full report on the NAIC website at the link https://content.naic.org/industry/data-call/life.

Artificial Intelligence/ Machine Learning Areas of Usage

Pricing Assumptions	Co. CNT
Pricing	
Yes	27
No	23
Reduced Time to Issue	
Yes	39
No	11
Specality Programs (i.e. Diabetes)	
Yes	N/A
No	N/A
Automated Approval/Denial	
Yes	35
No	14
Non-Automated Approval/Denial	
Yes	27
No	23
Underwriting Risk Class	
Yes	33
No	17
Other Underwriting Function	
Yes	12
No	37

Marketing	Co. CNT
Target Online Advertising	
Yes	34
No	60
ID Mail/Phone Ad Recipients	
Yes	27
No	67
Offers to Existing Customers	
Yes	24
No	70
ID of Potential Customer Groups	
Yes	26
No	68
Demand Modeling	
Yes	13
No	81
Direct Online Sales	
Yes	11
No	83
Other Marketing	
Yes	30
No	64

Risk Management	Co. CNT
Wearable Devices	
Yes	3
No	91
Wellness Initiatives	
Yes	4
No	90
Discount Medical Programs	
Yes	0
No	94
Technology to Detect Smoking	
Yes	2
No	93
Disease Detection	
Yes	2
No	92
Other Risk Management	
Yes	4
No	89

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

Transparency Limitation Disclosures	
Pricing & Underwriting	5/80
Marketing	6/77
Risk Management	3/74
Algorithmic Compliance with Laws	
Pricing & Underwriting	47/47

Accountability for Unintended Impacts	
Pricing & Underwriting	46/49
Marketing	40/55
Risk Management	27/67
Transparencey for Consumer Appeals	
Pricing & Underwriting	56/39

Accountability for Intended Impacts	
Pricing & Underwriting	47/47
Marketing	41/53
Risk Management	28/65
Safe, Secure, Robust AI Practices	
Pricing & Underwriting	49/46

Marketing	42/52
Risk Management	25/68

Marketing	39/56
Risk Management	29/65

Marketing	44/51
Risk Management	26/68

Accountability for Compliance with	
Pricing & Underwriting	53/42
Marketing	48/47
Risk Management	34/00

Other AI Guidance Followed	
Pricing & Underwriting	40/54
Marketing	39/55
Risk Management	30/63

Development Source of Guidance*	
Pricing & Underwriting	24/1/17
Marketing	25/2/14
Risk Management	19/2/11

NAIC AI Principles - Fair & Ethical	
Pricing & Underwriting	2/1
Marketing	2/1
Risk Management	2/1

NAIC AI Principles - Accountable	
Pricing & Underwriting	2/1
Marketing	2/1
Risk Management	2/1

NAIC AI Principles - Compliant	
Pricing & Underwriting	2/1
Marketing	2/1
Risk Management	2/1

NAIC AI Principles - Transparent	
Pricing & Underwriting	2/1
Marketing	2/1
Risk Management	2/1

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

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

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

Pricing Assumptions	**Marketing**	**Risk Management**
CRL	IXI AssetMix	Equifax
CURV Scorfe	AARP Services	Experisn
Exam One	Adobe	Lexis Nexis
Lexis Nexis (incl. MVR)	AGS	TransUnion
Milliman (Medical/Pharmacy)	Axciom	State DMV
Milliman Intelliscript	Bing & Googel Ads	Fitbit
Samba Saftey	Census (Incl. Religion Census)	Garmin
State DMV	Choregraph	Google Fit
TransUnion (Incl. DriverRisk)	Data Axle	MaoMyFitness
TrueRisk Life Score	EASI	Oura
	Epsilon	Peleton
	Experian	Polar
	IXI Wealth Complete	Samsung
	LinkedIn	Strava
	Merkle	Whoop
	Meta/Facebook	
	Neustar	
	SAS	
	Secuian	
	The Trade Desk	
	TikTok	
	TransUnion	

securian FINANCIAL®

Illustrations 101

NAIC A Committee
August 14, 2024

Brian Rock, FSA, CERA, MAAA
Director & Actuary

PRODUCTS ISSUED BY MINNESOTA LIFE INSURANCE COMPANY / SECURIAN LIFE INSURANCE COMPANY

NAIC Model 582 – Life Insurance Illustrations Model Regulation

Purpose

- To provide rules for life insurance policy illustrations that will protect consumers and foster consumer education.
- To ensure that illustrations do not mislead purchasers of life insurance and to make illustrations more understandable.
- The regulation provides illustration formats, prescribes standards to be followed when illustrations are used, and specifies the disclosures that are required in connection with illustrations.

Scope

- Applies to all group and individual life insurance policies except variable life, credit life, and life policies with no illustrated death benefits exceeding $10K.
- Illustration means “a presentation or depiction that includes non-guaranteed elements of a policy of life insurance over a period of years.”

Select Requirements

- Information about the insurer, producer, and policyholder.
- Descriptions of the premiums required, policy features, riders, and options available, both guaranteed and non-guaranteed.
- Definitions for key terms and column headings used in the illustration.
- Numeric summary showing the death benefit, values, and premium payments for at least years 5, 10, 20, and the year the policyholder turns 70, shown at the policy guarantee level, the insurer’s illustrated scale, and the illustrated scale with reduced non-guaranteed values.
- Tabular detail showing the premium payments, guaranteed death benefit, and guaranteed surrender value for at least years 1 through 10 and every 5th year after until age 100, maturity, or expiration.
- A disclosure stating “This illustration assumes that the currently illustrated nonguaranteed elements will continue unchanged for all years shown. This is not likely to occur, and actual results may be more or less favorable than those shown.”
- An illustration must be provided to the consumer at the time of application and at the time of policy delivery if an illustration is used.

Actuarial Guideline XLIX-A (AG49-A)

Background

- The Life Insurance Illustrations Model Regulation (#582) was adopted by the NAIC in 1995. Since that time there has been continued evolution in product design, including the introduction of benefits that are tied to an index or indices. Although these policies are subject to Model #582, not all of their features are explicitly referenced in the model, resulting in a lack of uniform practice in its implementation.
- AG49 was initially adopted in 2015 and revised in 2020 and again in 2023 to account for new product designs and industry practices.

Overview

- Applies to illustrations of Indexed Universal Life products.
- Provides guidance in determining the maximum crediting rate for the illustrated scale and the earned interest rate for the disciplined current scale.
- Limits the policy loan leverage shown in an illustration.
- Requires additional consumer information (side-by-side illustration and additional disclosures) that will aid in consumer understanding.

Illustration Practices and Consumer Presentations

Carrier Generated Presentations

- **Product Illustrations**
  - Base compliant product illustration
  - Optional reports providing additional details on items like policy charges or internal rates of return
- **Optional Presentations**
  - developed to help customers better understand the need for insurance
- **Marketing Materials**
  - Consumer Brochure
  - Case Studies

Field Generated Presentations

- **Technology Vendors**
  - Bring visual aids to illustration materials to help customers understand choices and impacts to illustrations
- **Conceptual Materials**
- **Marketing Materials**
  - Carrier Specific Rules and Review
- **Other**

Variable Life Insurance Illustration Regulations

FINRA 2210 – Communications with the Public

- **Communications must:**
  - Be based on principles of fair dealing and good faith.
  - Be fair and balanced.
  - Provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service.
  - Provide balanced treatment of risks and potential benefits.
  - Be consistent with the risks of fluctuating prices and the uncertainty of dividends, rates of return and yield inherent to investments.
  - Provide details and explanations appropriate to the Communication's audience.
- **Communications must not:**
  - Omit any material fact or qualification that could cause the Communication to be misleading.
  - Make any false, exaggerated, unwarranted, promissory or misleading statement or claim.
  - Contain any untrue statement of a material fact or otherwise be false or misleading.

FINRA 2211 – Communications with the Public about Variable Life Insurance and Variable Annuities

- Guidelines in addition to FINRA 2210 specific to Variable Life Insurance and Variable Annuities.
- **General considerations** around Product Identification, Liquidity, and Claims about Guarantees.
- **Specific Considerations**
  - Historical performance must conform to applicable FINRA and SEC standards.
  - Hypothetical illustrations using assumed rates of return may be used to demonstrate the way a variable life insurance policy operates.
  - An illustration may use any combination of assumed investment returns up to and **including a gross rate of 12%**, provided that one of the returns is a 0% gross rate.
  - Although the maximum assumed rate of 12% may be acceptable, members are urged to assure that the maximum rate illustrated is reasonable considering market conditions and the available investment options.

Thank you

Annuity Illustration Practices

August 14, 2024

Driven to do more.® ATHENE

Annuity Model Disclosure Rule

Model Regulation 245: Section 6 of the Annuity Disclosure Model Regulation Provides rule for illustrating fixed and fixed indexed annuities with Non-Guaranteed Elements

History

- The Model Regulation was adopted in 2012 but only 10 states (Iowa, Rhode Island, Colorado, Ohio, Alabama, West Virginia, Maine, Missouri, New Hampshire, Arizona) have adopted Section 6.

Highlights

- **6.F.(9) Outlines need for Non-guaranteed elements:**
  - 9: In determining the non-guaranteed illustrated values for a fixed indexed annuity, the index-based interest rate and account value shall be calculated for three different scenarios: one to reflect historical performance of the index for the **most recent ten (10) calendar years**; one to reflect the historical performance of the index for the continuous period of ten (10) calendar years out of the last twenty (20) calendar years that would result in the least **index** value growth (the "low scenario"); one to reflect the historical performance of the index for the continuous period of ten (10) calendar years out of the last twenty (20) calendar years that would result in the most **index** value growth (the "high scenario")
  - 9(b): If any index utilized in determination of an account value has not been in existence for at least ten (10) calendar years, indexed returns for that index **shall not be illustrated**. If the fixed indexed annuity provides an option to allocate account value to more than one indexed or fixed declared rate account, and one or more of those indexes has not been in existence for at least ten (10) calendar years, the allocation to such indexed account(s) shall be assumed to be zero;
  - 9(c) If any index utilized in determination of an account value has been in existence for at least ten (10) calendar years but less than twenty (20) calendar years, the ten (10) calendar year periods that define the low and high scenarios shall be chosen from the exact number of years the index has been in existence;
- **6.F.(10): Outlines need for guaranteed elements:**
  - The guaranteed elements, if any, shall be shown **before** corresponding non-guaranteed elements and shall be specifically referred to on any page of an illustration that shows or describes only the non-guaranteed elements (e.g., "see page 1 for guaranteed elements");

Implications

- Guaranteed Elements and minimum contractual guarantees are prominently displayed.
- Can only illustrate an index if it has at least 10 years of live history.
- Emphasis on 20 years of historical performance with strong focus on the most recent 10.

Driven to do more.® ATHENE

Disclosures

The Model Regulation outlines specific disclosures required to be included in the illustration.

- G.4.(b): For fixed indexed annuities: This illustration assumes the index will repeat historical performance and that the annuity's current non-guaranteed elements, such as caps, spreads, participation rates or other interest crediting adjustments, will not change. **It is likely that the index will not repeat historical performance, the non-guaranteed elements will change, and actual values will be higher or lower than those in this illustration but will not be less than the minimum guarantees. The values in this illustration are not guarantees or even estimates of the amounts you can expect from your annuity.** Please review the entire Disclosure Document and Buyer's Guide provided with your Annuity Contract for more detailed information;

What does this annuity illustration tell you?

About Annuity Illustrations

The hypothetical contract values are calculated based on historical index prices and assume the index will repeat historical performance and that the annuity's current non-guaranteed elements will not change. It is likely that the index will not repeat historical performance, the non-guaranteed elements will change, and actual values will be higher or lower than those in this illustration but will not be less than the minimum guarantees. The values in this illustration are not guarantees or even estimates of the amounts you can expect to receive.

Illustration Content

To help explain how this product works, this illustration shows annuity contract values under the following scenarios: guaranteed annuity contract values that show minimum values, non-guaranteed annuity contract values based on the custom illustrated rate and non-guaranteed annuity contract values based on the historical index performance of the most recent 10 years, all of which apply rates and rider charges that are current as of 05/01/2024.

This illustration also includes hypothetical annuity contract values using the following index return scenarios: the most recent 10-years, the highest 10-year index movement out of the last 20 years, and the lowest 10-year index movement out of the last 20 years. See page 13 for specified time periods.

Example Product Illustration of Athene Product

Guaranteed Scenario – Required, Worst Case Scenario (0% Growth)

ATHENE | Athene Performance Elite® 10 Annuity

Hypothetical Illustration
Assumed Issue Date: May 01, 2024

Here's a view of Guaranteed Annuity Contract Values

Annual Assumed Interest Rate: 0.00%

This hypothetical illustration is based on the allocation percentages and rates that are current as of the Assumed Issue Date of this illustration. This hypothetical illustration is based on a Premium Amount of $100,000, and a Premium Bonus of $12,000.

			End of Year Guaranteed Annuity Contract Values			
Year Ending	Beginning of Year Age	End of Year Age	Accumulated Value	Minimum Guaranteed Contract Value	Cash Surrender Value[1]	Death Benefit
04/2025	60	61	$112,000	$89,206	$89,206	$112,000
04/2026	61	62	$112,000	$90,946	$90,946	$112,000
04/2027	62	63	$112,000	$92,719	$92,719	$112,000
04/2028	63	64	$112,000	$94,527	$94,527	$112,000
04/2029	64	65	$112,000	$96,371	$96,371	$112,000
04/2030	65	66	$112,000	$98,250	$98,250	$112,000
04/2031	66	67	$112,000	$100,166	$100,166	$112,000
04/2032	67	68	$112,000	$102,119	$102,119	$112,000
04/2033	68	69	$112,000	$104,110	$104,110	$112,000
04/2034	69	70	$112,000	$106,140	$106,140	$112,000
04/2035	70	71	$112,000	$108,210	$112,000	$112,000
04/2036	71	72	$112,000	$110,320	$112,000	$112,000
04/2037	72	73	$112,000	$112,471	$112,471	$112,471
04/2038	73	74	$112,000	$114,665	$114,665	$114,665
04/2039	74	75	$112,000	$116,901	$116,901	$116,901
04/2040	75	76	$112,000	$119,180	$119,180	$119,180
04/2041	76	77	$112,000	$121,504	$121,504	$121,504
04/2042	77	78	$112,000	$123,873	$123,873	$123,873
04/2043	78	79	$112,000	$126,289	$126,289	$126,289
04/2044	79	80	$112,000	$128,752	$128,752	$128,752
04/2045	80	81	$112,000	$131,262	$131,262	$131,262
04/2046	81	82	$112,000	$133,822	$133,822	$133,822
04/2047	82	83	$112,000	$136,431	$136,431	$136,431
04/2048	83	84	$112,000	$139,092	$139,092	$139,092
04/2049	84	85	$112,000	$141,804	$141,804	$141,804
04/2050	85	86	$112,000	$144,569	$144,569	$144,569
04/2051	86	87	$112,000	$147,388	$147,388	$147,388
04/2052	87	88	$112,000	$150,262	$150,262	$150,262
04/2053	88	89	$112,000	$153,193	$153,193	$153,193
04/2054	89	90	$112,000	$156,180	$156,180	$156,180

[1] Cash Surrender Value (CSV) does not include applicable Market Value Adjustments (MVA). See possible implications of MVA on your CSV on page 17.

Page 6 of 22 pages
05/01/2024 03:29 PM

This illustration is not valid without all 22 pages.
Prepared for Valued Client

Non-Guaranteed Scenario – Most Recent 10 Repeating

ATHENE | Athene Performance Elite® 10 Annuity

Hypothetical Illustration
Assumed Issue Date: May 01, 2024

Here's a view of Non-Guaranteed Annuity Contract Values

Most recent 10 year period

Based on the index performance for the most recent 10 calendar years, repeating every 10 years, for each of the elected strategies and the corresponding indices.

This hypothetical illustration is based on the allocation percentages and rates that are current as of the Assumed Issue Date of this illustration. This hypothetical illustration is based on a Premium Amount of $100,000, and a Premium Bonus of $12,000. See page 6 for guaranteed values.

				End of Year Non-Guaranteed Annuity Contract Values		
Year Ending	Beginning of Year Age	End of Year Age	Annual Assumed Interest Rate	Accumulated Value	Cash Surrender Value[1]	Death Benefit
04/2025	60	61	7.50%	$120,400	$94,600	$120,400
04/2026	61	62	0.00%	$120,400	$95,890	$120,400
04/2027	62	63	7.50%	$129,430	$102,985	$129,430
04/2028	63	64	7.50%	$139,137	$111,893	$139,137
04/2029	64	65	0.00%	$139,137	$113,173	$139,137
04/2030	65	66	7.50%	$149,573	$122,832	$149,573
04/2031	66	67	7.50%	$160,790	$136,699	$160,790
04/2032	67	68	7.50%	$172,850	$151,954	$172,850
04/2033	68	69	0.00%	$172,850	$157,015	$172,850
04/2034	69	70	7.50%	$185,814	$175,689	$185,814
04/2035	70	71	7.50%	$199,750	$199,750	$199,750
04/2036	71	72	0.00%	$199,750	$199,750	$199,750
04/2037	72	73	7.50%	$214,731	$214,731	$214,731
04/2038	73	74	7.50%	$230,836	$230,836	$230,836
04/2039	74	75	0.00%	$230,836	$230,836	$230,836
04/2040	75	76	7.50%	$248,148	$248,148	$248,148
04/2041	76	77	7.50%	$266,759	$266,759	$266,759
04/2042	77	78	7.50%	$286,766	$286,766	$286,766
04/2043	78	79	0.00%	$286,766	$286,766	$286,766
04/2044	79	80	7.50%	$308,274	$308,274	$308,274
04/2045	80	81	7.50%	$331,394	$331,394	$331,394
04/2046	81	82	0.00%	$331,394	$331,394	$331,394
04/2047	82	83	7.50%	$356,249	$356,249	$356,249
04/2048	83	84	7.50%	$382,967	$382,967	$382,967
04/2049	84	85	0.00%	$382,967	$382,967	$382,967
04/2050	85	86	7.50%	$411,690	$411,690	$411,690
04/2051	86	87	7.50%	$442,567	$442,567	$442,567
04/2052	87	88	7.50%	$475,759	$475,759	$475,759

[1] Cash Surrender Value (CSV) does not include applicable Market Value Adjustments (MVA). See possible implications of MVA on your CSV on page 17.

Page 9 of 22 pages
05/01/2024 03:29 PM

This illustration is not valid without all 22 pages.
Prepared for Valued Client

Both Guaranteed and Non-Guaranteed scenarios project values to the Maturity Date of the contract.
6.F.(9).(g) requires the Most Recent 10 year period to be repeated each 10 years on the Non-Guaranteed scenario through Maturity.

Driven to do more.® ATHENE

Example Product Illustration of Athene Product

ATHENE | Athene Performance Elite® 10 Annuity

Historical Index Movement Comparison

Assumed Issue Date: May 01, 2024

Historical Index Movement Comparison - Most Recent 10, Highest, and Lowest Index Periods

The following comparison chart is intended to reflect the annuity product performance based upon the three different historical index performance scenarios, as described below. This chart assumes current rider charges, if applicable, and current rates as shown on page 3 of this illustration. This chart assumes no withdrawals are taken in the first 10 Contract Years. The values shown are not guaranteed; actual results may be higher or lower.

Contract Year	The **Most Recent 10** index scenario reflects the performance of the annuity assuming the historical performance of the index over the most recent 10 calendar year period.		The **Highest** index scenario reflects the performance of the annuity during a continuous period of 10 years out of the last 20 years where the index had the highest 10 year growth.		The **Lowest** index scenario reflects the performance of the annuity during a continuous period of 10 years out of the last 20 years where the index had the lowest 10 year growth.	
	Assumed Interest Rate	Accumulated Value	Assumed Interest Rate	Accumulated Value	Assumed Interest Rate	Accumulated Value
1	7.50%	$120,400	7.50%	$120,400	7.50%	$120,400
2	0.00%	$120,400	7.50%	$129,430	0.00%	$120,400
3	7.50%	$129,430	3.27%	$133,661	0.00%	$120,400
4	7.50%	$139,137	7.50%	$143,686	7.50%	$129,430
5	0.00%	$139,137	7.50%	$154,462	7.50%	$139,137
6	7.50%	$149,573	7.50%	$166,047	1.01%	$140,549
7	7.50%	$160,790	0.00%	$166,047	7.50%	$151,091
8	7.50%	$172,850	7.50%	$178,500	7.50%	$162,422
9	0.00%	$172,850	7.50%	$191,888	7.50%	$174,604
10	7.50%	$185,814	2.53%	$196,734	0.00%	$174,604
	Product Geometric Mean Interest Rate = 5.19%		Product Geometric Mean Interest Rate = 5.80%		Product Geometric Mean Interest Rate = 4.54%	

Driven to do more.® ATHENE

Common Illustration Practices

- **Common Practices**
  - Companies have built illustrations that are fully compliant with the model regulation in states that have passed the regulation and have largely adopted those same practices across all fifty states.
  - Common deviations in the states that have not adopted the model regulation include
    - Use of more than 20 years of data if it is available for an index.
    - May illustrate indices with less than 10 years of history provided it is rules based on the components have existed.

- **Current Environment**
  - Most recent 10 years is an optimistic time period for many indices
    - S&P 500 has done extraordinary well over recent past.
    - Rates are higher today and companies could not historically afford the high caps that are offered today.
    - Many volatility-controlled indices illustrate even higher returns.
  - Athene and other companies have responded to high illustration values with increased disclosure and adding functionality for producers to illustrate products below historical backtest.
  - Athene has had very few complaints with the current practices.

Driven to do more.® ATHENE

VA and RILA Illustrations

VA Illustrations (including RILA) must be complaint with both the SEC and FINRA

- **FINRA Rule 2210**
  - **Fair and Balanced**: Communications must be fair, balanced, and not misleading. They should provide a balanced presentation of risks and potential benefits.
  - **Clear and Accurate:** All information must be clear and accurate, avoiding exaggerated or unwarranted claims.
  - **Disclosure of Fees and Expenses:** Illustrations must clearly disclose all fees, expenses, and charges associated with the product.
  - **Hypothetical Performance:** If using hypothetical performance, it must be based on reasonable assumptions and clearly state that past performance is not indicative of future results.
  - **Principal Approval:** Certain communications, including sales literature, must be approved by a registered principal before use.
- **SEC Rule 156**
  - **Recently Amended:** SEC recently amended Rule 156 to encompass RILA sales literature, which will be effective September 23, 2024.
  - **Misleading Statements**: Rule places emphasis on advertising practices that may be “particularly susceptible to misleading statements.” Requires disclosure of items such as implicit and explicit fees, difference between price return and total return, any feature such as a cap that may limit gains, and non-guaranteed features that may change.
- **Key Differences from Insurance Practices**
  - **Less Prescriptive:** The regulations are less prescriptive on exactly how to show the hypothetical returns of a product.
  - **Filing Requirement:** All illustrations and marketing materials must be approved by FINRA
  - **Pre-Inception Index Data**: FINRA does not allow any product illustration using pre-inception index data.

Driven to do more.® ATHENE

RILA Example

Explaining the Buffer Segment Option

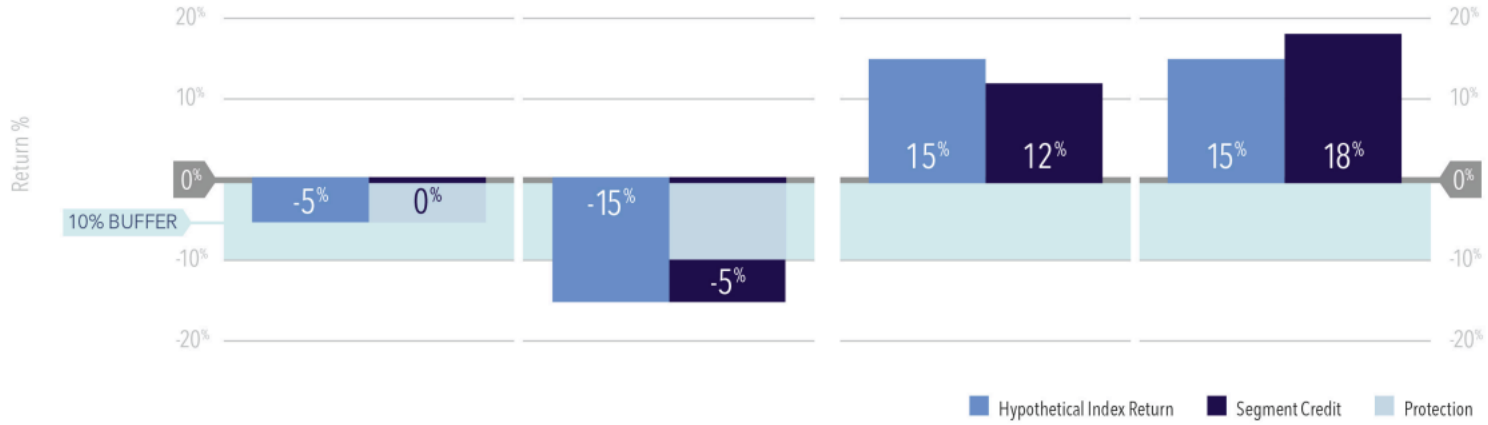
When the Buffer Segment Option is chosen, Segment Credits can be positive or negative based on the performance of the underlying index(es) you have selected.

In a down market: You are protected from potential market loss up to a Buffer Rate defined in your Contract. Losses in excess of the Buffer Rate will reduce your Segment Value. Per the example below, you would be protected from losses up to the 10% Buffer. You agree to assume the risk for losses beyond the Buffer Rate.

In an up market: You can earn positive Segment Credits, limited to a Cap Rate and/or Participation Rate. These limitations are declared by the Company before the beginning of each Segment Term Period. Per the examples below, when the index goes up, you can grow your savings by receiving Segment Credits up to the declared Cap Rate of 12%, or at a Participation Rate of 120% of the index increase.

Down Market		Up Market	
Loss within Buffer	Loss exceeds Buffer	Cap Rate	Participation Rate
$100,000 Performance	$95,000 Performance	$112,000 Performance	$118,000 Performance

Values shown above do not reflect applicable annual Segment Fees of 0.95%.



Hypothetical Assumptions: 100% of your Purchase Payment is allocated to a Buffer Segment Option, with the Buffer Rate set at 10%. In the first example, the Cap Rate is set at 12%, and in the second example the Participation Rate is set at 120%. These hypothetical examples are for informational purposes only and are not indicative of past, nor intended to predict future performance of any specific product including an annuity; nor are they intended to represent any particular product or Segment Option. See page 3 for current rates as of 07/30/2024.

FINRA emphasizes clear disclosures explaining how product features work

Driven to do more.® ATHENE

Please keep in mind that the primary reason to purchase a life insurance product is the death benefit.

Life insurance products contain charges, such as Cost of Insurance Charge, Cash Extra Charge, and Additional Agreements Charge (which we refer to as mortality charges), and Premium Charge, Monthly Policy Charge, Policy Issue Charge, Transaction Charge, Index Segment Charge, and Surrender Charge (which we refer to as expense charges). These charges may increase over time, and the policies may contain restrictions, such as surrender periods. Variable life insurance products contain fees, such as mortality and expense charges, and may contain restrictions, such as surrender periods. There may also be underlying fund charges and expenses, and additional charges for riders that customize a policy to fit individual needs. Charges and expenses may increase over time. The variable investment options are subject to market risk, including loss of principal.

These materials are for informational and educational purposes only and are not designed, or intended, to be applicable to any person's individual circumstances. It should not be considered investment advice, nor does it constitute a recommendation that anyone engage in (or refrain from) a particular course of action. Securian Financial Group, and its subsidiaries, have a financial interest in the sale of their products.

Insurance products are issued by Minnesota Life Insurance Company or Securian Life Insurance Company, a New York authorized insurer. Minnesota Life is not an authorized New York insurer and does not do insurance business in New York. Both companies are headquartered in St. Paul, MN. Product availability and features may vary by state. Each insurer is solely responsible for the financial obligations under the policies or contracts it issues. Variable products are distributed by Securian Financial Services, Inc., member FINRA, 400 Robert Street North, St. Paul, MN 55101.

Securian Financial is the marketing name for Securian Financial Group, Inc., and its subsidiaries. Minnesota Life Insurance Company and Securian Life Insurance Company are subsidiaries of Securian Financial Group, Inc.

Securian Financial
securian.com

400 Robert Street North, St. Paul, MN 55101-2098
©2024 Securian Financial Group, Inc. All rights reserved.
DOFU 8-2024

FINANCIAL WELLNESS RESOURCE GUIDE

State Diversity, Equity, and Inclusion (DEI) initiatives focused on improving the financial literacy of underserved populations within the insurance sector

NAIC NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

ABOUT
The NAIC

The National Association of Insurance Commissioners (NAIC) provides expertise, data, and analysis for insurance commissioners to effectively regulate the industry and protect consumers. Founded in 1871, the U.S. standard-setting organization is governed by the chief insurance regulators from the 50 states, the District of Columbia, and five U.S. territories to coordinate regulation of multistate insurers.

NAIC members are state insurance regulators from diverse backgrounds—but are united in their shared commitment to set standards and ensure fair, competitive, and healthy insurance markets to protect consumers.

© 2024 National Association of Insurance Commissioners

SPECIAL (EX) COMMITTEE ON RACE AND INSURANCE

LIFE WORKSTREAM

The Special (EX) Committee on Race and Insurance Life Workstream has been focused on marketing, distribution, and access to life insurance products in minority communities, including the role that financial literacy plays.

Every American has the right to impartial and equitable treatment, and financial education empowers consumers to make positive financial decisions.

© 2024 National Association of Insurance Commissioners

OUR APPROACH

The Life Workstream, in collaboration with the NAIC State Diversity Leaders, asked about states' financial literacy programs, specifically focusing on initiatives for underserved populations within their diversity, equity, and inclusion programs and initiatives.

By highlighting states' programs, we can share information and insights helpful to all insurance departments looking to take action to improve access and understanding in underserved communities.

© 2024 National Association of Insurance Commissioners

CURRENT
ACTIVE STATES

We are highlighting three initiatives, based on survey feedback. The Life Workstream welcomes additional information on state financial literacy initiatives.

PARTICIPATING
STATES/ JURISDICTIONS

Maryland
Oregon
Washington, D.C.

© 2024 National Association of Insurance Commissioners

FINANCIAL WELLNESS PLAN

MARYLAND

Maryland's Insurance Administration's (MIA) goal is to help consumers understand the importance of insurance. The information is provided through multi-lingual presentations (in-person and virtual); events (MIA set up tables at various locations including libraries, food banks, farmers markets); brochures and advisories on their website; videos; and social media posts.

MIA also reaches out to various community, faith-based, and nonprofit organizations to provide information or answer any questions they may have.

Kathleen A. Biranne, Maryland Insurance Commissioner

© 2024 National Association of Insurance Commissioners

FINANCIAL WELLNESS PLAN

OREGON

Oregon Division of Financial Regulation (DFR) offers a Statewide Outreach Program to improve financial literacy of underserved populations in Oregon. The department's Outreach Team also partners with a variety of non-profits to provide financial education programming to underserved communities, separately from the Sponsorship Program.

Andrew R. Stolfi, Oregon Insurance Commissioner

The Oregon DFR's Statewide Outreach Sponsorship Program supports organizations engaged in financial empowerment work within underserved communities. With up to five sponsorships available, each worth $25,000 for one-year contracts, the initiative aims to collaborate with trusted community partners to deliver financial education.

The program empowers consumers to make informed decisions about insurance and financial services, while also raising awareness of the division's free resources. Recipient organizations work closely with DFR staff to plan outreach events, including classes and participation in community health fairs, enhancing financial empowerment programming.

© 2024 National Association of Insurance Commissioners

FINANCIAL WELLNESS PLAN

District of Columbia

The DC Department of Insurance, Securities, and Banking (DISB) provides diverse programs for women, youth, immigrants, justice-involved individuals, military/veterans, and seniors or disabled individuals to meet specific financial needs covering budgeting, credit management, home buying, retirement planning, and wealth building.

The Consumer Analysis Division (CAD) specializes in life insurance flood insurance, estate planning for seniors, and addresses financial fraud and scams, with a focus on mental health parity and health insurance access.

The Office of Financial Empowerment and Education (OFEE) collaborates with stakeholders to provide actionable information and resources for managing expenses, building generational wealth, and maximizing income.

© 2024 National Association of Insurance Commissioners

Karima M. Woods, District of Columbia Insurance Commissioner

KEY FINDINGS AND SUGGESTIONS

Community Workshops and Seminars:
Host educational workshops and seminars in underserved communities to provide in-depth information about the importance of insurance. Cover a variety of insurance topics to address underserved populations needs.

Collaborate with Local Organizations:
Partner with local community centers, non-profit organizations, and religious institutions to reach underserved populations. Offer informational sessions or distribute pamphlets on insurance during community events or gatherings.

Multilingual Resources:
Recognize the diverse linguistic needs of underserved populations and provide insurance information in multiple languages. Ensure that materials are culturally sensitive and easily understandable for speakers of various languages.

Digital Outreach and Webinars:
Leverage online platforms to conduct webinars or create digital content that explains the significance of insurance. Use social media, community forums, and other online channels to disseminate accessible and engaging information.

Mobile Information Centers:
Establish mobile information centers that visit underserved neighborhoods, offering on-the-spot information about insurance. Trained representatives can answer questions and assist individuals in understanding the insurance options available to them.

Partnerships with Local Leaders:
Forge partnerships with local leaders and influencers within underserved communities. Leaders can play a pivotal role in promoting the importance of insurance through their networks, building trust, and encouraging community members to seek coverage.

© 2024 National Association of Insurance Commissioners

SPECIAL (EX) COMMITTEE ON RACE AND INSURANCE

LIFE WORKSTREAM

Meet the dedicated individuals who in 2023 brought a wealth of expertise and diverse perspectives to our collective efforts.

Judith L. French, Co-Chair, Ohio
John Finston, Co-Chair, New York
Karima M. Woods, Co-Chair, District of Columbia
Mark Fowler, Alabama
Barbara D. Richardson, Arizona
Michael Yaworsky, Florida
Dean Cameron, Idaho

Doug Ommen, Iowa
Timothy N. Schott, Maine
Kathleen A. Birrane, Maryland
Anita G. Fox, Michigan
Grace Arnold, Minnesota
Eric Dunning, Nebraska
Justin Zimmerman, New Jersey
Michael Wise, South Carolina
Cassie Brown, Texas

© 2024 National Association of Insurance Commissioners

THANK YOU

If you would like to add your state's information regarding how you provide insurance information specifically to underserved populations, please email us.

jcook@naic.org

NAIC NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

Additional Resources

Consumer Financial Protection Bureau (CFPB)
- Website includes educational resources focused on responsible use of financial services.

Federal Deposit Insurance Corporation (FDIC)
- Website includes resource Money Smart, which is a financial education program for researchers, educators, and youth interested in financial topics.

Federal Financial Literacy and Education Commission
- Website MyMoney.gov includes resources for researchers, educators, and youth interested in financial topics

FINRA Financial Industry Regulatory Authority
- FINRA Investor Education Foundation provides educational programs and research to help consumers achieve their financial goals.

American Institute of CPAs
- Website 360 Degrees of Financial Literacy provides a free program to help consumers understand their personal finances.

Champlain College
- The Center for Financial Literacy at Champlain College produces an annual report about state financial education requirements in high school.

Council for Economic Education
- The Council produces a biennial report about state financial education in schools and a financial education curriculum widely used in schools and includes insurance. It also provides a directory to state Council affiliates.

Everfi
- Produces a financial education curriculum widely used in schools and includes insurance.

© 2024 National Association of Insurance Commissioners

7-17-24 DRAFT Life Insurance Workstream
Life Insurer Survey Draft Questions

Comments Requested by COB Sept. 5, 2024

SURVEY OF LIFE INSURER UNDERWRITING GUIDELINES AS APPLIED TO JUSTICE IMPACTED INDIVIDUALS

The purpose of this survey is to better understand how life insurers consider an applicant's involvement with the criminal justice system during the underwriting process. We are interested in information about products currently being sold in your state.

DOCUMENTATION REQUESTED

1. Please provide your company's application questions that ask about life insurance criminal history. If the questions differ by product, please indicate to which products they apply.

2. Please provide your company's life insurance underwriting guidelines related to criminal history, activity, or convictions. Specifically, identify guidelines that limit product offerings, face amounts maximums, ratings, terms, etc. Please differentiate your underwriting guidelines by policy type (term, whole life, universal life)

3. Please provide the mortality/morbidity data/studies supporting your underwriting guidelines related to criminal history, activity, or convictions.

UNDERWRITING PROCESS QUESTIONS

4. Does your company consider misdemeanor or gross misdemeanor criminal convictions in the underwriting process?
   a. Is this asked on the application?
   b. If yes, what convictions could result in a rate class other than the most-preferred tier?

5. Does your company consider felony criminal convictions in the underwriting process?
   a. Is this asked on an application?
   b. What convictions result in a rate class other than the most-preferred tier?
   c. How many applications for individuals with a felony criminal conviction did your company receive in 2023?
      i. How many applications were approved?
         1. Of those approved, how many were rated due to the criminal conviction?
      ii. How many of those applications were denied or postponed based on the criminal conviction alone?

6. For your company's life insurance underwriting guidelines, is criminal history or drug use treated differently if the applicant admitted to the criminal history or drug use verses if the information was found through underwriting discovery?
   a. If yes, explain when and how the consumer is advised that criminal history or drug use was found and used to rate or decline the applicant.

7. How does your company consider an individual on parole for purposes of the underwriting process?

8. How does your company consider an individual with criminal charges but no convictions (e.g., past arrests, charges pending arraignment decision, etc.)?

9. Does your company have processes in place to ensure you are not asking about/considering expunged/sealed convictions?

10. Do your company's life insurance underwriting guidelines for criminal history vary based upon whether the applicant was born in a country other than the United States?

11. As part of the underwriting process, does your company use third-party vendors to collect information on an applicant's criminal history, criminal conviction, criminal activity, or suspected criminal activity?
    a. If yes, please list the third-party vendor, describe the information collected and what your company is doing to ensure that the third-party vendor's data is accurate and up to date.

DRAFT

April 25, 2024 Adopted by Life Workstream of the Special (EX) Committee on Race and Insurance

National Association of Insurance Commissioners (NAIC)

Special (EX) Committee on Race and Insurance – Life Workstream
Endorsement of Financial Literacy Courses in High Schools

THIS DOCUMENT recommends that state insurance departments engage with state financial regulators, state departments of education, and state legislators to promote a student's completion of stand-alone financial literacy and personal finance coursework as a prerequisite for high school graduation that includes an insurance component. This policy endorsement begins with the premise that a basic financial education, including one that introduces insurance types and concepts, is fundamental to an individual's future financial success. State insurance regulators are uniquely positioned to offer expertise in identifying key insurance concepts and skills to be included in the curriculum of a mandated course. We encourage insurance regulators to partner with those who have experience and expertise developing curriculum and teaching high school students to identify or create curriculum that includes insurance content for a mandated course. Insurance regulators can also offer their expertise to serve as resources for teachers as they prepare to deliver insurance-related content, including partnering with those designing and delivering teacher training.

Insurance regulators should play a key role in advancing conversations surrounding the need for financial literacy courses in our high schools, as financial education and individual financial circumstances may impact both insurability and cost of all insurance products, including life insurance. Further, comprehensive financial education for all students is expected to contribute to successfully addressing financial disparities among historically underrepresented groups.

FINANCIAL FUTURES BEGIN EARLY

It is never too early to begin teaching our youngest generations about financial responsibility, as these lessons can last a lifetime. While that education can start at home, according to T. Rowe Price, 57 percent of parents have some reluctance about discussing financial matters with their kids and 37 percent do not like to talk to their children about money, making classroom-provided education all the more important. In addition, foster children, a population that is overrepresented by African-American children[1], have been found to experience financial capability challenges, especially when transitioning out of the foster care system and into adulthood.[2]

For too many children, the only financial education available to them may be the one offered (hopefully required) through their school curriculums. And because many graduating high schoolers[3] will go directly into the workforce[4], it is important that financial education and skills are developed before graduation

[1] According the to Annie E. Casey Foundation, while black children represented 21 percent of the total child population in 2021, they represented 22 percent of all kids in foster care.

[2] *Study Finds Foster Youth Lack Critical Financial Skills*. March 24, 2021. Washington State University.

[3] According to the National Center for Education Statistics, in school year 2019-2020, the U.S. average adjusted cohort graduation rate (ACGR) for public high school students was 87 percent, with varying rates among demographic populations: Asian/Pacific Islander (93 percent), White (90 percent), Hispanic (83 percent), Black (81 percent), and American Indian/Alaska Native (75 percent).

[4] According to the National Center for Education Statistics, in 2021, about 62 percent of people who completed high school or earned a GED certificate immediately enrolled in college. Asian/Pacific Islander students had the highest ACGR (93 percent), followed by White (89 percent), Hispanic (82 percent), Black (80 percent), and American

to provide individuals with the best opportunity to achieve financial success.

STATE STATUTORY ENVIRONMENT

In recent years, states have focused on the importance of bringing financial literacy to high school classrooms. According to the Center for Financial Literacy at Champlain College, 7 states required high school graduates in the Class of 2023 to have taken a personal finance course before graduation with that number growing to 25 states for the Class of 2028. That still leaves students in half the country without state-required access to a basic financial education and provides an opportunity for state insurance and financial regulators to work with legislators to enact meaningful policy solutions.

FINANCIAL LITERACY IN SCHOOLS THROUGH AN EQUITY LENS

A state mandate is necessary to provide all graduating high schoolers with a similar baseline understanding of personal finance and will help to address inequities in access to financial education. According to research commissioned by Next Gen Personal Finance, in states that do not mandate a personal finance course as a graduation requirement (leaving such decisions up to local school district control), predominantly-minority high schools have only a 7 percent chance of being locally required to take such a course, while predominantly-white high schools are more than twice as likely to have such a local graduation requirement (14.2 percent).

FINANCIAL LITERACY AND INSURANCE

A comprehensive financial curriculum should focus on an understanding of the fundamentals of insurance, such as risk pooling, cost sharing, underwriting and premiums. A curriculum also should include exposure to insurances more likely to resonate with high school students, as well as include an introduction to the largest personal lines insurance coverages (auto, homeowners, health, and life) to prepare students for decisions that they face soon after graduation. Not only will personal finance coursework better prepare individuals for insurance decisions and transactions, but it may also improve their access to affordable insurance for the next several years of their lives or longer. It is particularly important for younger individuals to understand the difference between whole and term life insurance so that they may make informed decisions about which product to buy and the best time to purchase, including the benefits of accumulating cash value. Further, research consistently finds that requiring financial education in high school increases credit scores, particularly through reducing the likelihood of credit delinquencies. As the use of credit and insurance scores is generally not a prohibited underwriting factor across the country, increased credit scores resulting from high school financial education could have the inadvertent effect of reducing premium prices that consumers will pay for insurance products well into their financial futures[5].

Indian/Alaska Native (74 percent) students.

[5] The use of credit scores in underwriting personal lines insurance policies is controversial and this endorsement of required financial literacy coursework in high schools is NOT an endorsement of the use of credit or insurance scores in underwriting insurance policies.