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April 14, 2023

Commissioner of Insurance Nathan Houdek (WI)
Chair, Accelerated Underwriting (A) Working Group (AUWG)
Commissioner of Commerce Grace Arnold (MN)
Vice Chair, Accelerated Underwriting (A) Working Group (AUWG)

Re: ACLI Comments on the AUWG Draft Regulatory Guidance and Considerations

Dear Commissioners Houdek and Arnold,

Thank you for the opportunity to comment on the draft Regulatory Guidance and Considerations created by the Ad Hoc Drafting Subgroup. The American Council of Life Insurers (ACLI) remains very supportive of the important work conducted by the Accelerated Underwriting (A) Working Group. As regulators, industry and other stakeholders continue to discuss and work through the many issues associated with the use of Big Data, Artificial Intelligence (AI) and Machine Learning (ML) in accelerated underwriting, we are confident that the contributions of the Working Group will lead to better regulatory outcomes.

The primary point we would like to convey is that it is premature to conclude, as the draft does, that additional regulations, model laws, data, processes, and tools are necessary to regulate the use of external data and predictive models. It may be the case that as the use of AI, ML and Big Data in accelerated underwriting grows (as many predict), regulatory gaps will emerge that warrant additional or modified tools. However, we ask that regulators bear in mind that the many laws, regulations, and existing tools at their disposal today are well-equipped to address many of the legitimate questions and concerns arising from the increased use of accelerated underwriting.

Ongoing Workstreams

As the Working Group is aware, and as is discussed in the present document, there are currently multiple NAIC workstreams that touch on issues broader than accelerated underwriting like Big Data, AI and ML but certainly encompass it. Chief among these is the overhaul of existing comprehensive privacy laws in a new draft Insurance Privacy Protection Model Law (#674) and a forthcoming model bulletin on the use of Big Data/Artificial Intelligence Driven Decision-Making being developed by the Technology and Innovation (H) Committee. Our understanding is that four

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The American Council of Life Insurers (ACLI) is the leading trade association driving public policy and advocacy on behalf of the life insurance industry. 90 million American families rely on the life insurance industry for financial protection and retirement security. ACLI's member companies are dedicated to protecting consumers' financial wellbeing through life insurance, annuities, retirement plans, long-term care insurance, disability income insurance, reinsurance, and dental, vision and other supplemental benefits. ACLI's 280 member companies represent 94 percent of industry assets in the United States.

subgroups are drafting sections of this model bulletin that will touch on all aspects of Big Data, AI and ML, including governance and testing. In addition, the Big Data & AI (H) Working Group is conducting a comprehensive Life Survey and has also exposed draft NAIC Model and Data Regulatory Questions. As we pointed out when commenting upon this Working Group's draft referral to the Market Conduct Examination Guidelines (D) Working Group, there is concern that these overlapping workstreams will lead to inconsistent and confusing results. We know this potential outcome is not the intention, but urge again that these efforts be streamlined, coordinated, and sequenced so that definitions, scope, and other topics are harmonized. ACLI recommends a principles-based set of standards developed through the H Committee prior to the promulgation of the considerations set forth in the present document.

Specific Comments on the Regulatory Considerations

- **Testing:** While testing is not specifically called out in the document, it can be inferred from a number of considerations that this concept is what the drafting subgroup has in mind. For example, the references to use of external data and expected losses/correlation as well as the references to auditing of data sets. Currently, no standard or requirement exists pertaining to testing. Absent any sort of objective standard, companies will find it difficult to understand regulatory expectations. Testing of models is a complicated issue that likely will take a fair amount of time to resolve in a meaningful way. We suggest removing the various references to audits and discriminatory outcomes as they are premature at this time.
- **Existing Requirements:** A number of regulatory rules involving traditional underwriting currently govern the use of data, disclosure to consumers and data protection. These requirements emanate from the federal Fair Credit Reporting Act, NAIC models including the Insurance Information & Privacy Protection Model Act and the Unfair Trade Practices Act, as well as guidelines binding on actuarial professionals. For example, life insurers are required to notify consumers of the right to receive information regarding “the specific reason or reasons for the adverse underwriting decision” (from the NAIC Insurance Information and Privacy Protection Model Act (#670), Section 10). These, and similar requirements, apply regardless of the source of the information. Similarly, life insurers must advise consumers of their right to access and correct personal information in the possession of the insurers—although here it is important to highlight that the life insurer cannot correct information that originates with a third-party, for example, information contained in a medical file obtained from a medical professional. As mentioned above, the draft guidance should be harmonized and reconciled with the data usage requirements being developed in other workstreams, in particular the new Privacy Model and the Big Data/AI guidance.
- **Regulatory Expectations:** There are a number of places where we question the expectations that are seemingly being set for life insurers. For instance, the guidance suggests that regulators may “request insurers to provide data sources, predictive models, and algorithms for analysis”. As stakeholders have discussed in relation to NAIC workstreams, individual insurers have multiple models supporting their AUW programs with hundreds of data sources. Packaging this information for regulators would be a challenge. In addition, most insurance departments would struggle to have the resources sufficient to process and analyze the volume of information received from multiple insurers. We share the goal of achieving successful regulation of accelerated underwriting and suggest a more modest information gathering at this stage would likely further that outcome. The draft

guidance also states that “predictive models or machine learning algorithm(s) within accelerated underwriting accurately assess and price risk”. Accelerated underwriting generally looks to strike a balance between accuracy and speed/improved experience and perhaps other factors, with risk levels/tolerances that vary among insurers. The reference to “accuracy” implies there is a single, knowable, and correct outcome. That outcome is not going to be the case in our view. We would also suggest the reference to “price” is misplaced. Life insurance is not rate regulated. We note that the document cites work by the Casualty Actuarial and Statistical (C) Task Force. While this Task Force undoubtedly produced fine work, we would respectfully remind the Working Group that there are significant differences between life/health and property/casualty, both in how products are underwritten and how they are regulated. A final point here concerns the regulatory expectations for small companies. Small life companies are unlikely to have the resources needed either to create their own algorithms or retain on staff a data scientist able to analyze models. We understand that a number of third parties have been working with regulators to provide satisfactory evidence as to the integrity of their processes. Hopefully, as work on this progresses, consideration can be given to approved data sources and/or some form of safe harbor that meets regulatory needs while allowing small life insurers to employ accelerated underwriting.

- Definitions: As is the case across all the various Big Data, AI, ML, data privacy and accelerated underwriting workstreams, the definitions will be critical for shared understanding and fulfillment of any obligations. Terms such as “fair”, “transparent”, “reliable” “unfair discrimination”, “outcomes” and so on are undefined in this document. ACLI members have raised serious concerns regarding their ability to comply with such broad concepts, that could mean different things to different individuals. It is our understanding that the Privacy Protections (H) Working Group and the H Committee model bulletin will both contain definition sections. This lack of defined terms again points to the need for coordination among H committee working groups and other related activities. And, in this instance, we believe consideration should be given to limiting the breadth of the draft regulatory guidance given the overlapping requirements begin developed elsewhere. Work should at least be paused until such time as common definitions and objective criteria are produced.
- Confidentiality/Proprietary Information: As has been raised elsewhere, we urge the Working Group to continue keeping confidentiality concerns top-of-mind. Clarity around market conduct confidentiality, where applicable, and specific guidance that proprietary information will not be disclosed in published examination reports will be important. A focus on demonstrations and explanations will be preferable to the filing of models and algorithms themselves. Third-party data will similarly need to be handled carefully. Life insurance companies should not be able to disclaim all knowledge of how third-party models and algorithms operate, but there also needs to be recognition that third parties will not disclose certain proprietary information under any circumstances.

Thank you again for the significant work undertaken in creating this document. As with the draft referral, our overarching message is one of temperance and patience as other workstreams (primarily the anticipated H Committee privacy law update and Big Data/AI model bulletin) unfold. The material addressing outcomes, reviews, etc., should be removed at least until such time as objective criteria are developed. We look forward to answering any questions you may have and providing any additional information that would be helpful to the Working Group.

Sincerely

A handwritten signature in black ink that reads "David M. Leifer". The signature is written in a cursive style with a large, prominent 'D' and 'L'.

David M. Leifer

cc: Jennifer R. Cook, NAIC