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Accelerated Underwriting (A) Working Group

Virtual Meeting

February 23, 2022

The Accelerated Underwriting (A) Working Group of the Life Insurance and Annuities (A) Committee met Feb. 23, 2022. The following Working Group members participated: Grace Arnold, Chair (MN); Nathan Houdek, Vice Chair (WI); Jason Lapham (CO); Russ Gibson (IA); Cynthia Amann (MO); Chris Aufenthie (ND); Lori Barron (OH); and Lichiou Lee (WA).

1. Discussed Comments Received on the Jan. 25 Draft Accelerated Underwriting in Life Insurance Educational Report

Commissioner Arnold explained that she will be chairing the Working Group in 2022 along with Commissioner Houdek as vice chair. She reminded the Working Group that it last met Dec. 6, 2021, to discuss the Nov. 8, 2021, draft Accelerated Underwriting in Life Insurance Educational Report. As a result of the comments received on the Nov. 8, 2021, draft and the discussions during the Dec. 6, 2021, call, the report was revised; and the Jan. 25 draft Accelerated Underwriting in Life Insurance Educational Report (Attachment ?-A) was exposed for a public comment period ending Feb 11. Commissioner Arnold explained that the purpose of the virtual meeting today is to discuss comments received on the latest draft.

1. Academy Comment

Linda Lankowski (American Academy of Actuaries—Academy) explained that the Life Underwriting and Risk Classification Work Group of the Academy submitted a comment letter on the Jan. 25 draft Accelerated Underwriting in Life Insurance Educational Report. She highlighted a couple of main points that are raised in the Academy comment letter. She explained that the revisions made to the footnote in the report involving Actuarial Standard of Practice (ASOP) No. 12 need some additional revisions. She explained that the bullet point referencing ASOP No. 12 describes a practice that would not be allowed under ASOP No. 12. The letter suggests revising the current bullet that says, “Non-traditional data may be used to predict mortality, but the actual or reasonably anticipated experience may not correlate to risk of insurance loss” to say, “In accordance with 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.” Ms. Lankowski also mentioned that not all accelerated underwriting (AU) programs are discussed with actuaries and data scientists, and underwriters do not have standards of practice like actuaries do.

Ms. Lankowski said the Academy comment letter reiterates a couple of points included in the Academy’s previous letter regarding recommendations that indicate that they refer to state insurance regulators’ and form reviewers’ current responsibilities when they would actually be new requirements. She also said this paper, and the definition in particular, is likely to be used in other contexts, and it is particularly important to get it right. She said AU uses traditional and non-traditional data, and the definition of AU needs to accurately reflect that.

1. ACLI Comment

David Leifer (American Council of Life Insurers—ACLI) gave some brief highlights of the ACLI comment letter. He said the comment letter suggests having a more thorough discussion of traditional underwriting before turning to AU and comparing the two.

Mr. Leifer also mentioned that the ACLI continues to have concerns about the definition of AU in life insurance included in the most recent draft of the report. He explained that the ACLI believes that this definition will be used by other groups and in other contexts, which makes its accuracy particularly important. He said the following definition in the Jan. 25 draft is a little too broad:

Accelerated underwriting is life insurers’ use of big data, artificial intelligence and machine learning to underwrite life insurance in an expedited manner. For example, a process to replace traditional underwriting and allow some applications to have certain medical requirements, e.g., paramedical exams and fluid collection, waived. What distinguishes accelerated underwriting from traditional life insurance underwriting is the use of non-traditional, non-medical data using predictive models or machine learning.

Mr. Leifer said the ACLI is concerned that this definition may bring in things that are not commonly understood to be AU. He said the ACLI prefers the definition in the Nov. 8, 2021, draft, with a very minor tweak, to the version in the current draft, which would read:

Accelerated underwriting in life insurance is a process to replace traditional underwriting and allow some applications to have certain medical requirements, e.g., paramedical exams and fluid collection, waived. The process generally uses predictive models or machine learning algorithms to analyze data pertaining to the applicant, which may include~~s~~ both traditional and non-traditional underwriting data provided by the applicant directly, as well as data obtained through external sources.

Commissioner Arnold asked for the ACLI to share the specific things the current definition of AU may include that it should not. She explained that one of the challenges in drafting a definition of AU is that there does not appear to be a common understanding of what AU is or how it is used in practice, so specifics regarding what the ACLI sees as the practical implication of the current definition would be helpful. Mr. Leifer said he would share specifics with Jennifer R. Cook (NAIC) following the meeting.

1. CEJ Comments

Birny Birnbaum (Center for Economic Justice—CEJ) opposed the ACLI proposal to return to the Nov. 8, 2021, definition of AU. He said the ACLI proposal does not define what AU is but rather addresses the purpose of AU. He disagreed with the ACLI comment that the Jan. 25 definition is overly broad. He said the Nov. 8, 2021, definition is not useful in the context of educating state insurance regulators and stakeholders about AU to find a basis for recommendations for insurers and state insurance regulators regarding the use of AU. He said the proposed definition serves no purpose other than to promote AU. He said the proposed ACLI definition fails to identify the key distinguishing factors between traditional underwriting and AU, which is the use of new sources of data intended to be used with predictive modeling.

Mr. Birnbaum asked why the Working Group is not making recommendations based on its research. He said state insurance regulators need to improve their capabilities and authorities to address some of the issues that have arisen with AU in the same way that state insurance regulators who work on homeowners and auto insurance have said they need new authorities and resources. He posed the following questions to understand the Working Group’s thinking and start a discussion:

1. Why are you not recommending that states apply the same requirements for the use of consumer credit information in life insurance as those found for personal auto and homeowners, including filing of models for review and limitations on certain types of consumer data, such as medical debt?
2. Why are you not recommending that states routinely require life insurers to report the sources and uses of non-medical information in underwriting so state insurance regulators, and policymakers, stay current on insurer practices?

1. Why are you not recommending that states require life insurers to file AU models with state insurance regulators for review prior to use?

1. Why have you not identified the use of biometric information as a topic of particular concern given the racial bias in facial recognition and other biometric tools? As a corollary, why have you not discussed the Illinois Biometric Information Privacy Act (BIPA) as a model for consumer protection regarding insurers’ collection, use, and handling of biometric information?
2. Why are you not recommending that the NAIC expand the scope of its algorithmic assessment resource to include the review of AU models?

1. Why are you not recommending a requirement for insurers to test their AU models for racial bias, particularly given the industry’s history of race-based pricing and the racial bias found in various types of non-traditional data?
2. Why are you not recommending that at least the federal Fair Credit Reporting Act (FCRA) consumer protections—i.e., disclosure, access, error correction, recalculation—be applied to all data sources used in AU?

1. Why are you not recommending robust data collection to enable state insurance regulators to examine how insurers’ use of AU affects the availability and affordability of insurance, particularly in traditionally underserved communities and markets?

1. Why are you not recommending new training for state market conduct personnel regarding oversight of insurers’ AU practices? As a corollary, why are you not recommending that the Market Conduct Examination Guidelines (D) Working Group develop standards and procedures for the market conduct examinations you suggest related to AU?
2. Finally, what is the basis for your conclusion that existing authorities and resources are sufficient for consumer protection?

Commissioner Arnold said the questions Mr. Birnbaum posed provide the Working Group with a lot to consider with respect to future work. She reiterated that the educational paper was purposefully narrowly focused on the current state and making basic recommendations. She said the Working Group hopes to get additional information from the Big Data and Artificial Intelligence (H) Working Group survey looking into AU in life insurance, which would provide some additional information for the Accelerated Underwriting (A) Working Group and inform future work.

Mr. Birnbaum said he has been struck by the movement of this issue around to different working groups within the NAIC, and he asked the Working Group, as the subject matter experts (SMEs), to address the issue of AU in life insurance. He also asked the Working Group to advise the Market Conduct Annual Statement Blanks (D) Working Group to finish the AU edits to the life insurance Market Conduct Annual Statement (MCAS) it is holding pending a final definition by the Accelerated Underwriting (A) Working Group. He said the Working Group needs to explain that there may be slightly different definitions depending on the context in which they are being used, but if the edits are not finished by June 1, data will not be collected until 2025.

1. Comment from Consumer Representatives

Brendan Bridgeland (Center for Insurance Research—CIR) and Peter Kochenburger (University of Connecticut School of Law) submitted a joint comment letter. Mr. Bridgeland said a current flaw of the paper, in his and Mr. Kochenburger’s opinion, is that there are not enough recommendations. He said he supports the list of questions mentioned by Mr. Birnbaum. He mentioned that the paper states that state insurance regulators should be guided by current law, and it almost seems to suggest that this as an optional practice. The comment letter suggests adding the following language to point to the need for additional action, “When examining accelerated underwriting practices, regulators should be guided by current laws related to fair trade practices and unfair discrimination, and also recognize that the use of big data and artificial intelligence over the last five years has demonstrated that these standards need to be updated to meet these new challenges, and perhaps new regulatory tools added.” He said state insurance regulators should avoid playing catch-up to the practices in the marketplace.

Mr. Bridgeland also suggested that certain practices should be called out as requiring a heightened level of caution. He specifically mentioned that criminal history data has inherent racial bias, and facial analysis and facial recognition programs have a particular potential to lead to unfair outcomes. He mentioned the documentary film “Coded Bias” that the NAIC screened in March 2021, which explored the racial bias of facial recognition technology.

Commissioner Arnold said the educational paper will be revised based on the comments submitted and the discussion today. She said what she hopes will be a final draft of the paper will be exposed for a two-week public comment period limited to new issues and errors of fact. She said the Working Group will meet to consider adoption of the revised educational paper, and it plans to bring it to the Life Insurance and Annuities (A) Committee for its consideration at the Spring National Meeting.

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

SharePoint/NAIC Support Staff Hub/Member Meetings/Spring 2022 National Meeting/A/AUWG