Comments of the Center for Economic Justice

To the NAIC Accelerated Underwriting Working Group

Regarding Proposed Work Product of the Working Group

March 18, 2021

The Center for Economic Justice (CEJ) offers the following comments to the Accelerated Underwriting (AUW) working group on the November 16, 2020 Ad Hoc Drafting Subgroup Outline.

As background for our comments, we note the charge to the working group:

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.

It should be clear that guidance is needed for state insurance regulators regarding oversight of algorithms used for AUW. Such guidance should be included in the AUW WG document. For example, guidance should include routine filing of AUW algorithms with and review by state insurance regulators as well as collection and review by regulators of consumer outcomes related to use of AUW. Such guidance should not be controversial. AUW algorithm vendors already expect such requirements, which would track how pricing algorithms for personal lines property casualty insurance are generally overseen by regulators.

As additional background, we ask the working group to observe the recently-adopted NAIC guiding principles on artificial intelligence and suggest that the working group's work product track those principles: Fair and Ethical, Accountable, Compliant and Transparent. The application of the NAIC AI principles to AUW is relevant and appropriate as AUW is simply one variation of an insurance AI application. The working group's work product should develop the guidance necessary to implement the NAIC's AI principles.

With this background, we suggest the following outline

I. Executive Summary and Key Regulatory Guidance
II. Introduction
III. History of Working Group and Charge
IV. Overview of AUW
    a. AUW vs. traditional underwriting (a key point – traditional UW predicts mortality, AUW predicts what traditional UW would have done)
    b. Specific applications of AUW
    c. Data and algorithms used for AUW
    d. Historical Use and Use Trends for AUW
V. Fair and Ethical Considerations and Recommendation
VI. Accountability Considerations and Recommendations
VII. Compliance Considerations and Recommendations
VIII. Transparency Considerations and Recommendations
IX. Financial Regulation Considerations and Recommendations

Taking the last item first, we suggest that the AUW WG reach out to the Life Actuarial Task Force (LATF) for any contribution regarding considerations and recommendations related to financial regulatory oversight, including reserves, unique to AUW. If there are no such considerations, that is useful and relevant information and guidance for state regulators. One of LATF's charges is "provide recommendations for guidance and requirements for accelerated underwriting, as needed."

The remaining issues parts of the November 16, 2020 draft outline fit gracefully into one or more of the four AI principle categories. To be clear, the issues listed in section IV of that draft outline are necessary, but not sufficient.

A. Input data
    1. Traditional data – to CEJ IV c
    2. FCRA data – to CEJ VI and VII
    3. Nontraditional data – to CEJ IV c
    4. Discussion of bias in input data – to CEJ V

B. Algorithms/ machine learning
    1.5. What are they designed to do – CEJ IV a, b and c
    2.6. Evolving / machine learning – pros and cons – delete
    3.7. Testing conclusions/ Back testing/ random holdouts/ algorithm assurance
    8. Testing outcomesconclusions for unfair bias & mitigation – to CEJ V
    4.9. Tracking source of unfair or illegal outcomes – to CEJ VI

Transparency and Privacy
        5.10.   Description of issue – to CEJ VII and VIII
        6.11.   Existing practices/ state and federal laws – to CEJ VII and VIII

Additional Comments

Item IV B 3 in the November 16, 2020 draft is "Testing conclusions/Back testing/random holdouts/algorithmic assurance. This brief description suggests regulatory oversight or inquiry into how the model was developed by the insurer or the vendor. We suggest that such inquiry by regulators should be limited for at least two reasons.

First, regulators should be concerned with whether the application of the AUW algorithm complies with the law and not the mechanics of how the insurer or vendor developed the algorithm. If the algorithm is producing unfair or illegal outcomes, it may then be relevant to explore model development to track the cause of the problem.

Second, regulators should focus on measuring and evaluating the outcomes of the AUW and not the insurer's or vendors representations or explanation of what they claim the algorithm will do. At best, algorithms may not act as intended and produce outcomes vastly different than intended. At worst, insurers and vendors may provide limited, incomplete or false information to regulators about the development of the model.

Thank you for your consideration.