



AMERICAN ACADEMY *of* ACTUARIES

Cecil D. Bykerk, FSA, MAAA, HonFIA, RHU, FLMI, *President*

September 27, 2013

VIA EMAIL - (Eking@naic.org)

Richard Piazza, Chairperson
National Association of Insurance Commissioners (NAIC)
Casualty Actuarial & Statistical Task Force (CASTF)

Steven Ostlund, Chairperson
NAIC Health Actuarial Task Force (HATF)

Michael Boerner, Chairperson
NAIC Life Actuarial Task Force (LATF)

Richard Marcks, Chairperson
NAIC Joint Qualified Actuary (A/B/C) Subgroup

c/o Eric King
NAIC
1100 Walnut Street, Suite 1500
Kansas City, MO 64106-2197

Re: Comments on Discussion Draft of the Joint Qualified Actuary
(A/B/C) Subgroup, dated August 15, 2013

Dear Members of the NAIC Actuarial Task Forces:

On behalf of the American Academy of Actuaries (Academy),¹ the undersigned appreciates the opportunity to submit this comment letter to supplement the brief statement I made in Indianapolis and more fully respond to the NAIC request for comments on the above-referenced discussion draft paper (Discussion Draft) prepared by the NAIC Joint Qualified Actuary (A/B/C) Subgroup (JQA Subgroup) and exposed for comment by the CASTF, LATF, and HATF (collectively, the ATFs). The Academy would like to thank the JQA Subgroup for their thoughtful Discussion Draft, and their efforts in focusing awareness on actuarial professionalism issues.

¹ The American Academy of Actuaries is a 17,500-member professional association whose mission is to serve the public and the U.S. actuarial profession. The Academy assists public policymakers on all levels by providing leadership, objective expertise, and actuarial advice on risk and financial security issues. The Academy also sets qualifications, practice, and professionalism standards for actuaries in the United States.

Academy Mission and Regulatory Goals Aligned to Elicit High Quality Actuarial Work

The Academy's longstanding mission is "to serve the public and the U.S. actuarial profession," and is intended to support the objectives of regulators, as articulated in the Discussion Draft, to protect and assist the public. In the fulfillment of this mission, the Academy serves as the home for actuarial professionalism, including:

- Housing the Committee on Qualifications, which promulgates the U.S. Qualification Standards (USQS);
- Establishing through its bylaws the Actuarial Standards Board (ASB), which promulgates the profession's actuarial standards of practice (ASOPs); and
- Establishing through its bylaws the Actuarial Board for Counseling and Discipline (ABCD), that counsels and disciplines credentialed actuaries.

Actuaries credentialed by any of the five U.S.-based actuarial organizations are bound to follow a uniform Code of Professional Conduct (last modified and adopted January 1, 2001, hereinafter Code), and are subject to the USQS, ASOPs, and the ABCD. A code of professional conduct, qualification standards, standards of practice, and a counseling and discipline process are the hallmarks of any "profession." These collectively provide the public with assurance that work of these professionals meet or exceed a superior level of quality not required of their non-credentialed counterparts.

Overview of Academy Response to Discussion Draft

The comments of the Academy on the Discussion Draft are organized, in order, by the following questions:

- Do you agree with the recommendation on the definition of "qualified actuary" for
 - 1) signing Statements of Actuarial Opinion, and
 - 2) other regulatory areas?
- Do you believe the NAIC should take a "measured approach" or "more substantial action approach" as outlined in the paper with respect to inappropriate or unprofessional actuarial work?

Prior to addressing these questions, we have a few general comments on the Discussion Draft. We note that the Discussion Draft itself states: "[m]any of the "facts" presented in any of the arguments are much more subjective than the precise measurement of an angle or the objective accuracy of solving two simultaneous equations with two variables." While, as we have said, the Discussion Draft contains many factual inaccuracies and misleading statements, we want to focus the Academy's comments on the primary issues. As such, in these comments, we will address inaccuracies only to the extent they are relevant to the two primary questions being discussed here. However, we would be willing to discuss our concerns about all of the misleading and inaccurate statements with you directly if that would assist you with your deliberations on the overall Discussion Draft.

General Comments on Discussion Draft

The Academy has distilled the primary concerns of regulators as articulated in the Discussion Draft as follows:

“...regulators face challenges, hurdles and real problems in identifying qualified actuaries in either general or specific ways, and that existing mechanisms for addressing inappropriate or unprofessional actuarial work are inadequate to meet regulatory interests for resolution. ... many regulators no longer have sufficient confidence in reliance on current definitions, standards and processes that defer to the various professional actuarial organizations.”

The Academy has great respect for regulators, and we want to understand and work with them to address their concerns in order to inspire public confidence in credentialed actuaries’ work. As such, we agree with the statement at the top of Page 3 of the Discussion Draft wholeheartedly, which says:

“There is no need to establish redundant rules and processes. It would add unnecessary cost and bureaucracy. Serving the public is clearly stated in the Mission Statement of the AAA. Rather than setting up separate standards of practice and disciplinary processes, regulators should consider working collaboratively with the existing professional organizations to tighten those standards relating to regulatory submissions and develop more effective professional counseling and discipline processes.”

As we have already noted above, and as clearly stated in the Discussion Draft, serving the public is part of the Academy’s mission. In that regard, the Academy and the regulatory community do not have fundamentally different interests. Evidence of the Academy’s commitment to the public includes our work with state and federal legislators to provide an objective and unbiased actuarial perspective on a variety of public policy issues—for example, the solvency and sustainability of Social Security and Medicare. In addition, the Academy is the only actuarial organization whose primary mission focuses on promoting the highest standards of conduct and practice and enforcement of those through counseling and discipline to all credentialed actuaries. We recognize that, as with any dynamic standard setting process, there is always room for improving actuarial professionalism, and we welcome input from regulators in particular to improve those processes.

The Academy encourages the members of the ATFs to recognize the efforts made to promote excellence in actuarial practice, evident in the recognition of public service in the award each year to deserving public sector actuaries (see, for example, our annual [Myers Award](#) recipients). Other Academy efforts include work in setting qualification standards, maintaining the Code, and advancing professionalism awareness through discussion papers and professionalism webinars.

The statement made in the Discussion Draft that regulators “are an extremely small subset of the membership in the AAA,” and that, consequently, the Academy seeks to represent the interests of the “overwhelming majority [of its members] whom are employed by companies....” could not be further from reality. The Academy emphatically and overtly does not represent employers of actuaries in any way and in fact has a vigorously scrutinized culture of objectivity with checks and balances in its governance policies to prevent any effort to do so.

The Academy has for years invited regulators to attend seminars, webinars, and other Academy events for free or at a discount simply because it is aware of the importance of regulators as representatives of the “public interest” and our commitment to provide our services without a profit motive to you. The Academy encourages regulators to join its committees, work groups, and task forces, to benefit Academy work product with the unique perspectives provided by those who oversee actuarial regulatory work. In addition, the Academy specifically elicits input from regulators on ASOP drafts and, recently, the USQS solicitation. The ASB in particular has informed the Academy that they always consider the impact of any proposed ASOP in a regulatory context. For the past two years, the Academy has been hosting forums for regulators to facilitate a dialogue with the Academy, the Committee on Qualifications, the ASB, and the ABCD, on the complex issues facing the regulatory community.

Academy Goal to Provide Objective, Independent Work

The Academy has implemented significant processes to ensure its work does not reflect members’ employers’ perspectives, contrary to some assertions in the Discussion Draft. At its core, the Academy’s purpose is to provide objective, independent actuarial analysis to the public. To that end, the Academy has a strict [conflict of interest policy](#) and requires all of our approximately 1,200 volunteers, including those serving on the ASB and ABCD, to review and affirm in writing their compliance with the Academy policy. Those who do not provide that attestation are not allowed to continue as committee (task force, work group, etc.) members. In addition, Academy committees are routinely assessed for their composition to make sure there is appropriate representation from a variety of employers, including regulators (and other public sector actuaries), consultants (including solo practitioners), etc. to subject each work product to thorough vetting from differing viewpoints. Finally, all Academy committees and work groups are required to adhere to the Academy’s [Guidelines for Making Public Statements](#) and [Guidelines for Developing Practice Notes](#). These guidelines include requirements for peer review, as well as Academy legal, communications, and public policy review in addition to many other requirements in order to address any perceived inappropriate biases that might have stemmed from improper influences upon development of the work product. The Discussion Draft states incorrectly that “AAA committees withhold information on the employers of committee members.” The Academy does not withhold but rather does not put forward each committee member’s employer’s name on Academy work product because (1) each product is an Academy committee product and expressly NOT a product of any employer; (2) every committee member’s affiliations/employers are publicly available in the actuarial directory available online to anyone; (3) such publication of employers, in addition to being unwieldy, would misrepresent to the public that the work product is sponsored by an employer when it is not, and (4) Academy volunteers are required to “check their employer hat at the door” and act on behalf of the profession.

Responses to Specific ATF Questions

Do you agree with the recommendation of the definition of “qualified” actuary” for 1) signing Statements of Actuarial Opinion, and 2) other regulatory areas?

The Academy agrees with the Discussion Draft that reference to a “qualified actuary” must begin with reference to membership in a professional actuarial organization such as the Academy. As we have previously stated in comment letters, the “MAAA” designation issued by the Academy represents a credential that must meet a code of professional conduct, qualifications, and ASOPs

and subjects the actuary to a counseling and discipline process. Any other definition of “qualified actuary” without regard to a credential would necessitate extensive regulations to embody all of the concepts of the Code of Professional Conduct, the USQS, the ASOPs, and the procedures involved in affording due process to actuaries as set forth in the ABCD Rules of Procedure. The MAAA designation uniquely is the most comprehensive cross-practice designation in the U.S., and it efficiently implements the concepts that otherwise would be difficult to enact in a regulation.

Definition of Appointed Actuary (Section I)

In this section, the JQA Subgroup outlined four elements that they recommended be included in the definition of a “qualified actuary” to serve as an Appointed Actuary. We address each of these elements below.

1. *Documentation, available for public inspection, of one’s Continuing Education (CE) history.* The requirement for documentation of continuing education already exists in Section 6 of the USQS, and it always has been the expectation of the Academy’s Committee on Qualifications that should a regulator request evidence of compliance with the USQS CE requirements that an actuary would comply with the regulator’s request. The Committee on Qualifications discussed this point recently and stated its intent to make this point clearer in Section 6 of the USQS if opened for revision. It is not entirely clear what is meant by “available for public inspection.” If it is intended to suggest that a credentialed actuary must display his or her CE records on an ongoing basis in a public forum, it should be observed how highly extraordinary this requirement would be: we are not aware of any other profession that requires public posting of details of compliance with such profession’s CE requirements. Regulators may request such evidence, just as the ABCD can; and it is essential for a credentialed actuary to comply with such request.

2. *A written statement by the Appointed Actuary, available for public inspection, describing how one’s credentials, experience, and past and continuing education directly relate to the exposures subject to the Opinion, and therefore demonstrate qualification for issuing the Statement of Actuarial Opinion.* Again, it is unclear what is meant by “available for public inspection,” and we respond with the same point as above. This proposal also brings up the issue that assessment of someone’s qualifications is very subjective and raises the concern of whether the person reviewing the described qualifications considers himself or herself to be qualified to assess another actuary’s qualifications without spending considerable time evaluating the details. As noted in the Discussion Draft, the Academy’s Casualty Practice Council (CPC) has a process to assess the qualification of certain Academy members seeking to be qualified to issue the NAIC P&C Annual Statement opinion, and it requires the focus of the membership of that practice council and their thoughtful and thorough review and input before reaching the determination that any actuary that applies is qualified. Regulators should seriously consider whether state departments of insurance have the wherewithal to make similar assessments.

3. *Demonstration through the work submitted and the supporting documentation that the actuary has sufficient knowledge, skill, and due care to complete the assignment in accordance with all applicable laws, regulations, and generally accepted actuarial practice. This demonstration shall include a statement taking responsibility for this work product, including the completeness and accuracy of the work in light of recent regulatory and professional developments, and represents the appointed actuary’s true and complete opinion related to all significant issues related to the opinion.* This proposal seems to incorporate two separate concepts—one relates to qualifications

and the other to the work product itself. Determining whether an actuary has “sufficient knowledge, skill, and due care to complete the assignment in accordance with all applicable laws, regulations, and generally accepted actuarial practice” requires a thorough review and analysis. As with the point above, state insurance departments should scrutinize whether they have the resources to make this assessment. The demonstration with respect to work product (i.e., “statement taking responsibility for this work product...”) relates specifically to Section 5 of the USQS and a number of ASOPs such as ASOP No. 41. Regulators currently have the ability to find statements of actuarial opinions insufficient, reject the work product, and ask the insurance company to assign an alternative actuary to provide the appropriate work. As always, the regulator, particularly if a credentialed actuary, should then refer the initial actuary whose work was rejected to the ABCD.

4. *Timely response to inquiry from the regulator regarding methods and assumptions.* An appointed actuary should have the responsibility to the regulator to respond within 30 days (or less if requested) to a regulator’s inquiry regarding the Opinion with a proposed schedule acceptable to the regulator for resolution of inquiry. The Academy supports the ability of the regulator to ask an actuary for his or her methods and assumptions and agrees that an actuary should respond to such requests in a timely manner. Again, ASOP No. 41 requires certain disclosures in connection with methods and assumptions (Section 3.4.4 of ASOP No. 41: “An actuarial communication should identify the party responsible for each material assumption and method. Where the communication is silent about such responsibility, the actuary who issued the communication will be assumed to have taken responsibility for that assumption or method.”). If an actuary is not in material compliance with ASOP No. 41, the regulator, particularly if a credentialed actuary, should report such actuary to the ABCD.

The Discussion Draft states that self-certifications provided by actuaries on their statements of actuarial opinions, as required in Section 5 of the USQS, are insufficient without further evidence of the actuary meeting qualifications. It is the position of the Academy that when our members state they are qualified they are fully cognizant of the USQS and their own obligation under Precept 2 of the Code of Professional Conduct to be fully qualified to perform the actuarial services they have been asked to provide. The Academy’s leadership understands that over the years there has been an erosion of trust in self-certifications, and are open to consideration of whether another mechanism, such as potential audits, may help to bolster greater confidence in regulatory oversight of actuarial opinions.

The Academy supports the removal of the phrase “in good standing” from regulations as in the context of actuarial organizations because the five U.S.-based actuarial organizations, including the Academy, do not designate members with this terminology. There are other mechanisms used to illustrate to the public when an actuary has failed to comply with his or her Code of Professional Conduct obligations. For example, the Academy maintains on its homepage a link to all Academy actuaries who have received public reprimands, suspensions, or expulsions.

Definition of “Qualified Actuary” for Other Regulatory Areas (Section II)

In the event that regulators wish to expand the concept of an appointed actuary for other regulatory actuarial filings, the Academy would again recommend that any definition of “qualified actuary” include reference to membership in the professional actuarial organization that establishes qualification standards (i.e., the Academy). The Discussion Draft suggests that certain regulatory actuarial filings may require additional continuing education and experience to satisfy

qualifications. The Academy's Committee on Qualifications recently sought comments from the public on the USQS. In particular, the Committee also sought input from regulators on whether there may be other regulatory areas in which actuarial qualifications should be heightened through further education, experience, and continuing education.

Section 3 of the USQS, known as specific qualification standards, already requires more stringent qualifications for the NAIC annual statement opinions for Life and A&H, Health, and Property & Casualty in terms of specific education and exams, experience, and continuing education. The USQS will expand its specific qualification standards as needed to protect the public, as described in Appendix 4 of the USQS. The Committee was hopeful that more regulators would have provided feedback to improve this area of the USQS, but it is willing to consider whether rate filings or other regulatory actuarial filings require further qualifications should the Committee decide to recommend opening up the USQS.

Inappropriate or unprofessional actuarial work - "Do you believe the NAIC should take a "measured approach" or "more substantial action approach" as outlined in the paper?"

The Academy believes it would be inappropriate for states to embark upon disciplining actuaries using either of these approaches. It would be difficult to apply a conceptual definition of "inappropriate or unprofessional actuarial work" because it can be highly subjective and vague, and attempts to implement it may result in arbitrary imposition of penalty if used as a basis for discipline. This is why the actuarial profession coalesced around a uniform Code of Professional Conduct, which includes the USQS and ASOPs, and organized the ABCD to investigate and recommend discipline for credentialed actuaries. In credentialing or licensing any professional's qualifications to practice, it is important to be clear on the rules that apply.

The U.S. Constitution has long imposed on state or federal "actors" (e.g., regulators) that laws, rules, or regulations must not be vague or overbroad lest they not provide sufficient notice to the public (or in this case practicing actuaries) as to what constitutes a violation of the law. The ABCD's structure and Rules of Procedure were designed to address these concerns, and other due process considerations, to create a fundamentally fair process for discipline. These constitutional considerations are of a much stronger and more stringent nature when applied to the federal or state governments' licensing activities than when they are applied to any private voluntary membership in professional organizations. We, therefore, believe that state regulators must be very careful if they intend to move towards a path of regulating and disciplining actuaries. While the NAIC Actuarial Opinion and Memorandum Regulation for life insurance companies and fraternal benefit societies contains some language regarding hearing and imposition of severe penalties on actuaries, it is also our understanding that this regulation has rarely been used, and it has yet to be challenged constitutionally.

The ABCD was established in 1992 and has over 20 years of experience in investigating and hearing cases of actuarial misconduct. More importantly, the ABCD serves as the profession's resource in providing sound counseling on good actuarial practice and conduct. Members of the ABCD are knowledgeable, highly skilled actuaries who have years of experience in dealing with actuarial misconduct and actuarial practices. In addition, the ABCD strives to have a current or former regulatory actuary serve among its board members in order to bring greater understanding and obtain insight on regulatory issues. States will again have to examine the resource needs, expertise, or time to adequately handle and process actuarial cases of misconduct assuming that a

definition of “inappropriate or unprofessional actuarial work” might even be found that will withstand challenges based on constitutionality over vagueness or scope.

Academy representatives have recently heard from some regulators at NAIC meetings that they see or have been seeing “bad actuarial work.” While the Academy is committed to promoting “good actuarial work” and reducing “bad actuarial work,” without specific details of what constitutes “bad actuarial work” it is impossible to address such general anecdotal expressions. It was hoped that the Discussion Draft would contain more detailed examples of bad work. Inappropriate or unprofessional work must be analyzed on a case by case basis. Some of the language in the Discussion Draft utilizes terms such as “violates either the letter or spirit of the [Code]” or “work that is inconsistent with either the letter or intent of applicable laws and regulations.” In order for a person to abide by the “spirit” or “intent” of any law they need to understand in a consistent manner what those “spirits” or “intents” are in order to comply beyond the letter of the law.

The five paragraphs associated with the “measured approach” in this section of the Discussion Draft are already addressed in either the Code of Professional Conduct and/or ASOPs. For example, subparagraph (a) are potential Code violations; subparagraph (b) are potential Precept 1, Precept 3, and ASOP No. 41 violations; subparagraph (c) are potential Precept and ASOP violations; subparagraph (d) is a potential ASOP No. 41 violation; and subparagraph (e) implicates many Precepts and ASOPs. Since the details of the potential violations are not described, it is difficult to assess if there were violation of the Code; however, if there are violations, the ABCD is the resource that should be utilized by regulators to report actuarial misconduct.

The Academy recognizes that there could be some actuaries doing poor work, but like any profession, there is no failsafe surveillance mechanism to ensure that each and every member provides excellent work at all times. But the Academy stresses the importance to all of its members of providing actuarial services in compliance with the Code of Professional Conduct, and laws, rules, and regulations. The profession relies on peers and practitioners to report misconduct, and it is required under Precept 13 of the Code. Some regulators have stated several times that a regulatory actuary who is credentialed by any of the five U.S.-based actuarial organizations should not be put in the position of “policing” the profession and therefore they will not follow Precept 13 and report actuarial misconduct to the ABCD. The Academy is not requesting any regulator to do something beyond what any credentialed actuaries should do, namely, report any apparent unresolved material violations of the Code to the ABCD in order to improve and provide the best services. Regulatory actuaries, and perhaps auditing actuaries, are in the best position to see improper actuarial work and therefore trigger Precept 13 responsibilities more than some other actuaries. This notion of regulators reporting poor actuarial work to the ABCD is additionally very consistent with the regulator’s obligation to serve the public interest.

Recommend a process for regulatory and/or professional organizations’ actions to deal with inappropriate or unprofessional actuarial work.

The Academy agrees with the Discussion Draft recommendation that “regulatory actuaries and NAIC staff should work together with the ASB and the ABCD to improve actuarial standards and disciplinary process, including counseling.” The ASB has been reaching out to regulators to obtain feedback on exposure drafts of ASOPs, particularly on ASOPs that impact regulatory filings. Over the years, the ASB has tried to balance the need for broad application of ASOPs that rely on well-honed professional judgment that do not unduly restrict actuarial practice in situations that can vary

greatly in facts and circumstances with the need for specific and prescriptive ASOPs. The ASB will adopt more prescriptive ASOPs when needed and appreciates regulatory feedback on the ASOPs that regulators believe should be prescriptive, including your views on the newly exposed ASOP on principles-based reserving for life insurance companies.

The Academy does not agree that states should provide alternative methods and actions to provide separate or different consequences from the significant ones that already exist for actuaries who perform “inappropriate or unprofessional actuarial work” for the reasons set forth above. Civil and criminal proceedings exist and will continue to exist for violations of laws and we have no objection to those proceedings. With respect to professional credentials, however, the Academy believes the ABCD is best suited to handle actuarial misconduct, mindful, as noted above, that there is potential room to improve the ABCD process. While some have complained of the timeliness associated with the ABCD process, in order to effectively provide for due process, some of these processes may not be short cut. We believe the states would face similar and even more challenging issues if they were to routinely hold hearings to discipline an actuary, and in particular face challenges if they were to “suspend” an actuary from practicing in their state or in other states for a period of time. Nonetheless, the ABCD is committed to improving its efficacy where there are opportunities to do so and welcomes input from regulators in areas to improve its process.

There are complaints by regulators regarding the confidentiality of the ABCD process. In a country where we believe “innocent until proven guilty,” the ABCD has to balance the impact of premature public disclosure of a referral and investigation to the ABCD with irreparable reputational damage. There are frivolous complaints that occur every year, and publication of such meritless complaints prior to dismissal could destroy the actuary’s ability to practice even if subsequently found to have no violation of the Code. Nevertheless, the ABCD is considering ways to improve its process and providing more information to the public. It has been working with the Academy’s Council on Professionalism to consider enhancements. In response to regulator concerns, the ABCD has committed to providing individual complainants with ongoing information about a matter that is referred to the ABCD by such complainant, is modifying its annual report to make clearer the general nature of cases handled during the year, and is contemplating ways to assist promoting information to the public about good actuarial practice.

It is important to note to the ATFs the work performed by the ABCD that has not received attention. While issue has been raised that the public is only aware of public reprimands, suspensions, or expulsions by member organizations, the ABCD has a process of counseling actuaries who receive private reprimands. In addition, the overarching and most frequent body of work of the ABCD is to provide guidance on actuarial practice to actuaries so that they avoid providing bad actuarial work. These good works are rarely known to the public but are nevertheless a large part of what the ABCD does.

Conclusion

In closing, the Academy again wishes to thank the JQA Subgroup for all its hard work in pulling together the Discussion Draft and focusing our attention on the very important subject of actuarial professionalism. The Academy shares the concerns of regulators on making sure that actuarial work is performed by qualified credentialed actuaries who follow the highest standards of qualifications, conduct, and practice in providing actuarial services. The Academy is committed to

encouraging our members to improve all aspects of their work and stands ready to work with regulators to address their needs and concerns in a direct and effective manner. We plan to continue our outreach efforts with regulators at the NAIC meetings and in other forums to obtain input from regulators so that we may constantly improve our mission and serve the public. Please do not hesitate to contact Sheila J. Kalkunte, Esq., Academy assistant general counsel (kalkunte@actuary.org), if you have any questions.

Sincerely,

Cecil D. Bykerk, MAAA, FSA, FCA, HONFIA
President
American Academy of Actuaries