



AMERICAN ACADEMY *of* ACTUARIES

March 27, 2013

Mr. Richard Marcks
Chair, Joint Qualified Actuary (A/B/C) Subgroup
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
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Re: Comments on Joint Qualified Actuary (A/B/C) Subgroup questions

Dear Richard:

On behalf of the American Academy of Actuaries (Academy),¹ the undersigned appreciate the opportunity to submit the following responses to the questions circulated by the National Association of Insurance Commissioners' (NAIC) Joint Qualified Actuary (A/B/C) Subgroup related to considerations for developing a uniform definition of a "qualified actuary" and addressing "inappropriate" or "unprofessional" actuarial work.

Considerations Regarding a Uniform Definition

1. Is it essential that a regulatory definition of Qualified Actuary include reference to specific professional organizations?

When defining a "qualified actuary," reference to certain specific actuarial professional organizations enables regulators to fully capture all of the complex, multifaceted obligations that such an organization requires of a member actuary to be deemed "qualified."

When a regulatory definition of a "qualified actuary" includes reference to membership in the American Academy of Actuaries, that reference essentially captures the requirements its members are obligated to commit to - the highest standards of actuarial credentials, professionalism, and experience- and does so essentially in the most succinct manner.

Academy members, similar to members of the four other U.S.-based actuarial associations, must abide by the Code of Professional Conduct (Code), which includes compliance with qualifications standards (Precept 2), including continuing education, and actuarial standards of practice (Precept 3).

Membership in the Academy is voluntary. An actuary who chooses to become a member makes an affirmative commitment to the profession and the public in recognizing and supporting the Academy's mission and work to:

- 1) uphold the highest standards of professionalism; and
- 2) provide objective and independent actuarial information, analysis, and education for the formation of sound public policy.

¹ The American Academy of Actuaries is a 17,000-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.

In the United States, there is no legal prohibition on any individual, regardless of education or experience, to call themselves an “actuary.” However, only actuaries who are members of one or more of the U.S.-based actuarial organizations are entitled to use the credential of that organization. Use of those credentials by members indicates the mandatory obligation one has to adhere to the *Code* including qualifications (education and experience particular to specific actuarial work) and the actuarial standards of practice.

2. What is the value of membership in a professional actuarial organization?

Non-credentialed actuaries do not have a code of conduct, qualification standards, or standards of practice to which they must adhere. Different organizations have different values and provide different services which benefit the actuarial profession according to their own missions and goals. The Academy’s mission to serve the public and the profession is accomplished, in part, by its objectives to “provide for the establishment, maintenance, and enforcement of high professional standards of actuarial qualification, practice, and conduct,” and “advance actuarial practice by informing and educating its members on public policy and professionalism issues and current and emerging practices.”

The Academy is uniquely the home and the source of obligations for actuarial professionalism across all practice areas. The Academy is the home of the committees that monitor the *Code of Professional Conduct* and it is through the Academy that the *U.S. Qualification Standards* are promulgated. In addition, it is the Academy that through its bylaws established the Actuarial Standards Board (ASB) and the Actuarial Board for Counseling and Discipline (ABCD) which operate autonomously in carrying out their specified responsibilities.

In addition to the above, the Academy brings value to its membership, the profession, and the public interest in the following ways:

- The Academy is the only cross-practice actuarial organization whose members broadly include practitioners from every area of practice, including new and emerging areas of practice. This broad membership enables our credentials “MAAA” to apply in a variety of regulations that may not be appropriate for other credentials individually.
- The MAAA designation has been recognized consistently by federal and state policymakers and other authorities as a comprehensive and efficient way to connote qualified actuarial expertise in legislation, regulation, and eligibility for public employment or appointment to official commissions. Examples include the Medicare Part D program, the Mental Health Parity Bill, sections of the Affordable Care Act, the Railroad Retirement, Postal Service retiree health act, the federal Children’s Health Insurance Program (CHIP) act, the federal Risk Retention Group act, and almost every state regulation in connection with the NAIC annual statement actuarial opinion for life, health, and property & casualty.
- The Academy is the actuarial organization which has long had a dedicated Council on Professionalism (Council) that provides a forum for all practice areas to consider professionalism issues. Its membership includes liaisons from the US-based actuarial organizations and Academy practice councils from all areas. The Council continuously focuses on improving actuarial professionalism through discussion papers, education, webinars, and interaction with other organizations to obtain feedback on professionalism

issues (e.g., hosting sessions with state regulators during NAIC meetings to help us understand the issues facing actuarial regulators).

- The Academy designation illustrates a member actuary’s strong commitment to the profession serving the public interest through its support of professionalism and public policy.

3. Should a regulatory definition of a Qualified Actuary include a licensing or certifying process that verifies and/or approves the qualifications of an individual actuary?

The definition of a “qualified actuary” is a complex definition depending upon the area of actuarial practice. Due to this complexity, the Academy has housed for years the Committee on Qualifications² that is charged with promulgating and modifying the *U.S. Qualification Standards* (with Academy board approval) and responding to questions about actuarial qualifications under the *U.S. Qualification Standards* applicable to credentialed actuaries (non-credentialed actuaries are under no obligation to meet these standards nor are they required to adhere to the *Code*). The Committee includes representatives from all five of the U.S.-based actuarial organizations, actuaries from all traditional practice areas (life, health, property & casualty, and pension), and a state insurance regulator. Under the Academy’s auspices, this cross-practice group is comprised of actuaries with the experience to review the qualifications necessary and appropriate for actuarial practice in all areas.

All Academy members must review and comply with these standards prior to entering into any assignment, in addition to their other requirements under Precept 2 of the *Code*. These rigorous requirements, including those for continuing education, already require actuaries to meet strict standards. A single regulatory definition of qualified actuary that includes provision of licensing or certifying processes would seem likely to be fraught with oversight challenges and may in fact add little or no substance to a regulator’s qualitative understanding of a practicing actuary’s qualifications. In a plan to issue practicing certificates, such as is the case in the U.K, many issues would have to be considered, such as: can an existing entity be made to issue them; would a new entity be needed; if so, what would be its governance and composition and source of authority; what would it cost; how would that cost be supported; and what standards would it adopt or use to issue certificates. Licensing entails extensive legal and practical liability issues. The Academy would be happy to be a resource to address regulators’ interest in such a certification process if they desire to more thoroughly examine the pros and cons of investigating such a proposal.

4. Should a Qualified Actuary be required to disclose for public inspection a statement of his or her qualifications for the specific regulator work involved?

Academy members³ are required under Section 5 of the *U.S. Qualification Standards* to state that they are qualified under the U.S. Qualification Standards to issue the statement of actuarial opinion that they are rendering, including NAIC annual statement opinions. In addition, under Section 6 of the *U.S. Qualification Standards*, Academy members are required to maintain records of their compliance in case they are audited. Therefore, such information is available now from any individual for inspection if required or requested by a regulator. The fundamental question, however, is one of trust in relying upon an actuarial credential, such as the NAIC and other government regulators have in prior years, that reflects the mandatory obligation to do work only when qualified to do so.

² On or about 1979, the Academy established a Life Qualifications Committee and a Property and Liability Qualifications Committee to recommend standards for signing the life and property actuarial opinions, respectively. In 1982 the Academy consolidated its various qualification committees into a newly charged Committee on Qualifications in an effort to consider qualifications cross practice.

³ As well as any actuary who is a member of an actuarial organization who has adopted the Academy’s *U.S. Qualification Standards*

The Academy's Casualty Practice Council (CPC) by state regulation makes such determination for non-Casualty Actuarial Society members who seek to issue the NAIC P&C Annual Statement Actuarial Opinion. The CPC's experience with such cases is that rendering a single decision is time- and effort-intensive, even in just a few cases per year.

5. When an individual in the role of an actuary is “qualified” to provide reports or opinions on which regulators are expected to rely, should that individual have an obligation to the regulator equivalent to the obligation to a principal?

The MAAA designation requires that member actuaries act with honesty, integrity, and competence in providing work or otherwise in a manner to fulfill the profession's responsibility to the public. This comes from Precept 1 of the *Code* and is applicable no matter who the “principal” is for whom the actuary works. The wording of the *Code* in particular clearly uses the word “Principal” in the context of an employer or client. However, an actuary's obligations extend well beyond simply his or her obligations to a client. All actuaries have an obligation to comply with the *Code, US Qualification Standards* (for opinions issued or rendered in the US), and applicable actuarial standards of practice. The *Code* and standards of practice contain numerous descriptions of an actuary's obligations, many of which apply to regulators, the public, and others who are not the principal for a particular engagement.

Considerations Regarding Inappropriate or Unprofessional Actuarial Work

- 6. In dealing with situations of inappropriate or unprofessional actuarial work, two different approaches have been suggested for giving the actuary “due process”:**
- (a) Referring the matter to the Actuarial Board for Counseling and Discipline (ABCD); or**
 - (b) Handling the matter through an administrative hearing process in accordance with the state's Administrative Procedures Act.**

What are the pros and cons of each of these two approaches?

The term “due process” is one that stems from the U.S. Constitution applicable to individual rights and, therefore, is embedded in various laws, rules, and regulations applicable to state and federal entities. When the ABCD formed, it was included in the bylaws of a not-for profit professional association, (i.e., the Academy) however it adopted its own Rules of Procedure (see <http://www.abcdboard.org/publications/rules.asp>) containing measures to both protect the integrity and independence of the process as well as the due process of subject actuaries.

Should a government-entity approach be enlisted to supplant ABCD, a more complex process than is perhaps envisioned by administrative hearings would have to be in place to comply with due process requirements. One of the functions of the ABCD, in addition to providing guidance for actuaries, is to investigate allegations of potential violations of the *Code* and to make recommendations of discipline to member organizations (the ABCD does not impose discipline). This process involves at least the following: Filing of a complaint by a complainant; sending notice of such complaint to the actuary (known as the subject actuary (SA)); receiving and reviewing the response from the SA; determining whether to dismiss or continue the matter; selecting an investigator; allowing the SA to accept or reject the investigator for cause; sending case specifics to the investigator; engaging the investigator in investigating the matter and discussing with all relevant parties, including providing a final report of findings; submitting the final report to the SA; receiving the response from the SA; transmitting all materials to the full ABCD; allowing the full ABCD to decide on its face whether to dismiss, counsel, investigate further, or schedule a hearing; scheduling a hearing date with the SA and sending the notice to the SA; selecting a venue for the formal hearing; conducting a formal hearing with a court transcriber; allowing the ABCD to determine dismissal, dismissal with counseling, or level of discipline to be recommended to the member's actuarial organization; preparing written decision and recommendation;

distributing the same to organizations; and maintaining records of proceedings. The ABCD maintains records of the proceedings as well as files for all actions as they may review prior decisions made regarding an SA to factor into its deliberations in a new matter involving the same actuary. Of course, all of the foregoing involves costs and expenses paid for by the profession. Once a member organization makes a decision on the recommendation of the ABCD, and the member organization's appeal process is exhausted, the decision is final.

In general under the model Administrative Procedures Act (APA), when an agency decides to take action against an individual, a hearing notice is provided to the individual as well as the procedures for responding to the complainant. Representatives of the agency and the individual are given the opportunity to file relevant motions and/or objections, file motions, and present findings and case study to support their positions. Each side has an "opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence." The model APA states that parties have the option of conducting all hearings by electronic means (e.g., telephone, video conference). Each party has the opportunity to attend, hear, and respond during the hearing. During the course of the hearing, subpoenas can be issued and discovery rules apply. The presiding officer can choose whether to open or close the hearing to the public. Any evidence must be part of the hearing record. The presiding officer prepares and makes available a final finding in the case. In the case of licensure, no license is revoked until and unless appropriate under the final ruling. If all parties agree, mediation is an option in most cases. All final state administrative orders are subject to judicial review as set forth in the model APA which means an actuary would be able to litigate the final order through the state supreme court, which tends to be a time intensive process.

When specifically applying an APA approach versus the ABCD approach to actuarial practice and conduct, there is compelling reason to arrive at the conclusion that the merits weigh heavily in favor of utilizing the ABCD process. Not the least of which is the fact that for the last twenty years, the ABCD has had members with the knowledge and expertise to analyze, examine and manage complex investigations and hearings while ensuring actuaries' individual due process rights are observed. The ABCD is also the primary resource for actuaries to receive free confidential advice on actuarial professionalism matters in order to improve their work product prior to any violations occurring. The ABCD also enlists the assistance of independent investigators with years of experience in the matter under investigation. Similar to the APA, the subject actuary and the complainant should be informed about the relevant decisions at each step of the process. Also, as noted above, while the state administrative order is subject to further judicial review, a private organization's discipline is likely final once appeals within the organization are exhausted.

One additional difference between the ABCD and APA processes relates to the public nature of the proceedings. The ABCD does not publicize its findings unless public action is taken (i.e., reprimand, suspension, or revocation of designation) by a member organization, in order to protect the reputation of an actuary from unsubstantiated claims. Further, unlike an APA, the ABCD process allows the profession to provide counseling rather than discipline in cases where the actuarial error does not rise to the level of a reprimand; an option not available under state procedures.

As a final note, we do not necessarily see these approaches as being mutually exclusive. Both of these approaches can be appropriate for their respective audiences.

7. Regulators rely on actuarial work in both ratemaking (e.g., rate filings) and reserving (e.g., statutory statements of actuarial opinion), among other things, and inappropriate or unprofessional actuarial work can appear in both of these settings. As regulators deal with inappropriate and unprofessional actuarial work in ratemaking and reserving contexts, respectively, how and why should the process be different, if at all?

In addressing concerns with inappropriate or unprofessional work by an actuary, a regulator should follow the same process for reporting a complaint to the ABCD as outlined in the response to the previous question. The violations of the *Code* are principle based, so poor work product in either ratemaking or reserving would result in the same decision, namely a violation of the *Code*. Of course, to the extent that relevant laws or regulations are alleged to have been violated in a complaint, those circumstances would be specific to the public law surrounding reserving or ratemaking/filing.

One of the distinctions that the Academy's Health and Professionalism Practice Councils have pointed out in recent legislation in certain states is that the qualifications necessary for ratemaking may be different for reserving, however, both of these are encapsulated in Precept 2 of the *Code* and would be addressed in the same manner in the case of discipline, whether through the ABCD or some state agency. The ABCD process—receiving a complaint, investigating the complaint, and conducting hearings in accordance with due process—should be the same regardless of whether the actuarial work in question is ratemaking or reserving.

8. Should review of situations related to this charge be transparent?

It is important for all parties to establish what the term “transparent” means in order to appropriately respond to this question. The Academy strives to further transparency in cases of discipline rendered. In fact, the Academy displays on its website a list of all actuaries who are members of the Academy who have received public discipline and provides details of the rationale for discipline. In addition, the Academy's Council on Professionalism has created a task force to identify potential improvements to the actuarial discipline process from the perspectives of members, regulators and the public, and has been diligently working on ways to balance the confidentiality of ABCD proceedings with the ideals of transparency.

While we hope this response has addressed your question, we were not entirely sure of its intent. Should you require more input, further clarification on this question would be helpful.

9. If an actuary meets the regulatory standard for qualified actuary, should that qualification continue indefinitely? Or should that qualification be dependent on continued performance according to certain standards?

To be a “qualified actuary” an actuary must adhere to the requirements described in the *U.S. Qualification Standards*, including a requirement of obtaining at least 30 continuing education hours each calendar year (15 of which must be on subjects related to the NAIC annual statement actuarial opinions if the actuary provides those), of which three hours must be on professionalism topics and six hours must be “organized activities.” To the extent that a static qualification is detached from the *U.S. Qualification Standards*, regulatory qualification could lag behind the profession's efforts. The Academy feels strongly that continuing education is a must for actuarial work, as the field is a dynamic one requiring up-to-date knowledge in actuarial science, methods and techniques in order to maintain high standards of practice and conduct. As such the profession's approach has always been that of constant review, with periodic examination of the *U.S. Qualification Standards* and *Actuarial Standards of Practice*. Similarly, the *Code* does not state that once an actuary has met his/her obligations under the *Code* at one time that he or she has permanently satisfied its requirements; rather the requirements under the *Code* are ongoing. In essence, remaining a “qualified actuary” is a current and never-ending process, rather than a finite one, that depends on continued commitment to education in relevant practices.

As always, the Academy welcomes the opportunity to work with regulators to address concerns, including our ongoing practice of making representatives of the Council on Professionalism, the Committee on

Qualifications, the ABCD, the ASB, and each of the practice-specific councils available to meet with regulators during NAIC meetings to answer questions and discuss any actuarial issues.

We request the opportunity to discuss our responses in more detail during the open subgroup session on Friday, April 5 during the Houston NAIC meeting. If you have any questions, please contact Sheila Kalkunte, the Academy's Assistant General Counsel (Kalkunte@actuary.org; 202.223.8196).

Sincerely,

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