



# Applying the Same Code in Uncertain Economic Times

*Webcast – September 21, 2011*

**Sponsored by the Academy's Council on Professionalism and  
co-sponsored by the ASPPA, CAS, CCA, and SOA**





# Presenters\*

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\*The statements and opinions expressed herein are solely those of the panelists and do not constitute official statements or positions of the Academy, CAS, SOA, ABCD, or the speakers' respective employers.





# Academy Mission

**The American Academy of Actuaries' mission is to serve the public and the United States actuarial profession.**

To accomplish this:

- As the public voice for the United States actuarial profession, the Academy provides independent and objective actuarial information, analysis, and education for the formation of sound public policy;
- The Academy provides for the **establishment, maintenance, and enforcement of high professional standards of actuarial qualification, practice, and conduct;**
- The Academy advances actuarial practice by informing and educating its members on public policy and professionalism issues and current and emerging practices;






# Academy Mission (cont'd)

- The Academy identifies and addresses issues on behalf of the public interest on matters in which actuarial science provides a unique understanding;
- The Academy increases the public's understanding and recognition of the value of the actuarial profession;
- The Academy provides opportunities for professional development of its members through volunteerism and service to the profession;
- The Academy facilitates and coordinates response to issues of common interest among the U.S.-based actuarial associations; and
- The Academy coordinates the representation of the U.S. profession globally.





# Overview of the Code of Professional Conduct

- The revised Code of Professional Conduct (Code) took effect January 1, 2001 and was adopted by the five U.S.-based actuarial organizations (Academy, ASPPA (ACOPA), CAS, CCA, & SOA).
- The Code sets forth professional/ethical standards for actuarial members of the five U.S.-based actuarial organizations.
- Actuaries who commit material violations of the Code are subject to counseling or discipline as described herein.





# Overview of the Code of Professional Conduct (cont'd)

- The Code contains 14 Precepts, along with annotations providing further guidance on adhering to the Precepts.
- The Precepts are the equivalent of standards and must be followed by practicing credentialed actuaries who are subject to the Code, where ever located.
- In the event that any Precept conflicts with applicable laws or regulations, follow the law (this is true for actuarial standards of practice as well).





# The Code in Tough Times

- In tough and uncertain times, it is important to keep the Code in the forefront of our minds to avoid making bad decisions under pressure.
- Things to consider:
  - Am I making decisions today that I will regret three years from now?
  - Am I tempted to “help” clients or my employer by making their problems mine?
  - Is the quality of my work declining because of time or staffing pressures?
  - If I am changing jobs, am I doing so professionally?





# Professional Integrity

## Precept 1

- Act honestly, with integrity and competence, and in a manner that fulfills the profession's responsibility to the public and upholds its reputation, including:
  - Perform professional services with skill and care;
  - Refuse to provide professional services that would violate or evade the law, or damage the profession's reputation;







## Professional Integrity (cont'd)

- ❑ Do not abuse professional relationships; and
- ❑ Do not engage in professional conduct that involves dishonesty, fraud, deceit, deception, or misrepresentation, or act in a way that will reflect adversely on the actuarial profession.
- ❑ Most allegations in front of the ABCD will involve Precept 1, often in addition to other precepts.





# Professional Integrity (cont'd)

- Potential violations of Precept 1 may include:
  - An actuary who commits tax fraud or does not honor his financial commitments.
  - An actuary who does not keep up with law changes because he is overworked.
  - An actuary who purposefully understates or overstates assumptions to benefit a financially stressed client or employer.
  - An actuary who does sloppy work because they are doing the job of two actuaries.
  - An actuary who does a poor job on an assignment because the client has not paid him.





# Qualification Standards

## Precept 2

- Perform professional services only when qualified to do so AND in compliance with applicable Qualification Standards:
  - ❑ Know and follow applicable Qualification Standards, which, in the U.S., are published by the Academy.
  - ❑ Revised Qualification Standards became effective January 1, 2008.
  - ❑ The absence of a specific qualification standard in your jurisdiction does not relieve you of the duty to comply.





# Qualification Standards (cont'd)

- Two separate and distinct aspects to this Precept:
  1. “Look in the mirror” test (do you believe you are qualified to perform the actuarial services);  
and
  2. Satisfaction of the US Qualification Standards.

Examples of violating the Qualification Standards include failure to meet annual CE requirements, or failure to meet three-year experience requirement prior to issuing SAOs.





# Qualification Standards (cont'd)

- Changes to the QS continuing education requirement for enrolled actuaries who are subject to the Code:
  - Many EAs were exempt from continuing education requirements of the QS for SAOs issued prior to January 1, 2012.
  - The EA exemption is narrowing for SAOs issued in 2012 and later such that most pension actuaries will need to earn 30 CE hours annually to meet the QS.
  - Review the QS and earn continuing education as necessary in 2011.





# Qualification Standards (cont'd)

- Changes in practice
  - Change from one practice area to another
    - Qualification Standards
    - Look yourself in the mirror
  - Change within a practice area – the look yourself in the mirror test





# Standards of Practice

## Precept 3

- Make sure that work performed by you, or under your direction, meets applicable standards of practice:
  - ❑ Know and follow applicable standards, which, in the U.S., are the Actuarial Standards of Practice (ASOPs) promulgated by the Actuarial Standards Board.
  - ❑ When applying standards, use professional judgment.
  - ❑ Be prepared to disclose and justify deviations.





## Standards of Practice (cont'd)

- This precept sweeps into the Code all of the Standards of Practice issued by the ASB (or by some other body if practicing outside the U.S.). An allegation of bad actuarial work will usually involve an alleged violation of one or more ASOPs. This precept **REQUIRES** you to know about the applicable standards and that your work is in compliance with them.







# ASOPs and Applicability Guidelines

- Determine which ASOPs apply to your work – use the Applicability Guidelines!
  - ❑ Developed by Council on Professionalism to provide non-authoritative reference to actuaries as to which standards apply
  - ❑ Encourages professionalism of actuaries but not intended to be exhaustive
  - ❑ Still the responsibility of actuary to ensure work complies with applicable ASOPs, regardless of whether they are identified in the Applicability Guidelines
  - ❑ Recently updated (Dec 2009)



# Compliance with ASOPs – Introduction to Actuarial Standards of Practice



- Unlike the Applicability Guidelines, the Introduction to the ASOPs carries the same weight and authority as the ASOPs themselves.
- Describes purpose of ASOPs and process for development
  - Not narrowly prescriptive – more “principles” based
- Defines key terms commonly used in ASOPs
  - **Known** – actuary has knowledge of item in question
  - **Practical/Practicable** – appropriate to identify circumstances when not practical to undertake task or assignment
  - **Professional judgment** – thoughtful application of training/experience, recognition of reasonable differences of opinion are appropriate
  - **Reasonable** – exercise level of care and diligence consistent with generally accepted practice and necessary to complete assignment
  - **Reliance** – permit good faith reliance upon others, subject to disclosure
- **Currently under review by ASB**





# New/Revised ASOPs – The ASB has been busy!

- **ASOP No. 9**, *Documentation and Disclosure in Property and Casualty Insurance Ratemaking, Loss Reserving, and Valuations* – **Repealed**  
Effective May 1, 2011
- **ASOP No. 10**, *Methods and Assumptions for Use in Life Insurance Company Financial Statements Prepared in Accordance with U.S. GAAP* – Effective October 15, 2011
- **ASOP No. 28**, *Statements of Actuarial Opinion Regarding Health Insurance Liabilities and Assets* – Effective December 31, 2011
- **ASOP No. 36**, *Statements of Actuarial Opinion Regarding Property/Casualty Loss and Loss Adjustment Expense Reserves* – Effective May 1, 2011
- **ASOP No. 41**, *Actuarial Communications* – Effective May 1, 2011
- Other ASOPs updated for deviation language and removal of PSAO references – Effective May 1, 2011





# Standards of Practice

## (cont'd)

- Advice: Reread the Code frequently with particular assignments in mind; also reread the applicable ASOPs with your current assignment in mind; keep up-to-date on ASOP changes.
- Compliance would include intentional deviations with the appropriate amount of documentation.
  - Compliance does NOT restrict your ability to be creative and innovative.
  - Required documentation and an ability to justify the use of procedures which depart materially from standards.





# Communications and Disclosure

## Precept 4

- Take appropriate steps to ensure that communications are clear, appropriate to the circumstances and intended audience, and comply with ASOPs, as applicable:
  - Identify yourself as the person responsible for your communications;
  - Indicate your availability to provide supplemental information.





# Communications and Disclosure

(cont'd)

## Precept 4

- In practice, this is a more difficult precept than may be apparent.
- Difficulties in communicating uncertainty.
- Balancing sufficient caveats with readability and clarity of the report.
- An actuarial report should include the individual actuary signing the report.





# Communications and Disclosure

## (cont'd)

### Precept 5

- An Actuary who issues an Actuarial Communication shall identify the Principal(s) for whom the communication is issued and describe the capacity in which the actuary serves.





# Communications and Disclosure

(cont'd)

## Precept 5

- In practice this Precept is rarely violated.
- This Precept involves disclosure of your capacity regarding a piece of work such as an op-ed piece or other publications.
- Work for professional societies.







# Communications and Disclosure

(cont'd)

## Precept 6

- Make timely disclosure to Principal of all known direct and indirect sources of compensation related to an assignment:
  - Disclose any relationships that are pertinent but may not be apparent;
  - This applies to all such compensation, wherever received within your firm.





# Communications and Disclosure

(cont'd)

## Precept 6

- Examples of potential violations for failure to disclose include: stock ownership, position of policyholder, or income to your firm.
- If you developed a new pricing technique, and marketed it to multiple clients, but allowed each one to believe that they were the sole purchaser of the technique and therefore had a unique competitive advantage over others - this could be a violation of Precept 6. This might happen if you billed every client for all hours worked on a project.





# Conflict of Interest

## Precept 7

- An Actuary shall not knowingly perform Actuarial Services involving an actual or potential conflict of interest unless:
  - ❑ the Actuary's ability to act fairly is unimpaired;
  - ❑ there has been disclosure of the conflict to all present and known prospective Principals whose interests would be affected by the conflict; **and**
  - ❑ all such Principals have expressly agreed to the performance of the Actuarial Services by the Actuary.





## Conflict of Interest (cont'd)

- Actual or potential conflicts must be considered.
- All three conditions must be satisfied, not just the first one.
- When in doubt, disclose the situation.
- Example: Request to perform ratemaking services for two competitors within a given market.
- In today's world of corporate takeovers, if an independent consultant was asked to evaluate loss reserves for a firm by both the buyer and seller, this would have to be disclosed to both parties and express permission granted by both parties before the work could be completed in accordance with this precept.





# Control of Work Product

## Precept 8

- Take reasonable steps to ensure that your services will not be used to mislead other parties:
  - Recognize the risk of misuse;
  - Present your work clearly and fairly;
  - Set appropriate limits on the use and distribution of your work.





## Control of Work Product (cont'd)

- Annotation 8-1 is an important guide.
- Distribution and Use clauses
- Be very careful about allowing your client to distribute an exhibit from your report without the context provided by your text.
- Availability to third-party recipients to answer any questions they may have.
- It is easy to violate Precept 8 even when all other precepts have been satisfied (e.g. Precepts 1, 2, 3, and 4).
- Particular dangers may arise when your Principal wishes to use the work you performed for one purpose for an entirely different purpose.





## Control of Work Product (cont'd)

- If you agree, for whatever reason, to sign an unqualified loss reserve opinion for an annual statement with knowledge that the reserves are, in fact, inadequate, you have violated this precept and would be subject to discipline.
- Similarly, if you simply do what your boss wants you to do, even though you know that what he wants you to do is wrong...you have violated this precept.





# Confidentiality

## Precept 9

- Do not disclose confidential information to another party unless authorized by the Principal or required to do so by law.







# Confidentiality (cont'd)

- ❑ Generally, you will know when you are under any sort of confidentiality limitations. They are often either specifically stated or show up as formal written agreements. Often the nature of your employment arrangement will clearly indicate the nature of the confidentiality of your work.
- ❑ Violations of confidentiality represent a violation of this precept, even if the breach was accidental and unintentional.
- ❑ When in doubt, treat your information as though it were confidential.





# Courtesy and Cooperation

## Precept 10

- Perform services with courtesy and professional respect and cooperate with others in the Principal's interest:
  - ❑ You should discuss differences of opinion objectively and with courtesy and respect;
  - ❑ You may agree to represent, in the same matter, another actuary's current or former Principal;
  - ❑ Annotation 10-3 allows disagreement between two actuaries but does not in any way invalidate the rest of the Code.





# Courtesy and Cooperation (cont'd)

- When does being slow to return calls and emails rise to a violation of Precept 10?
- Cooperating with others in the principal's interest may involve providing relevant information to another actuary when the principal has given consent.





## Courtesy and Cooperation (cont'd)

- ❑ You may issue an alternative opinion to one issued for a Principal by another actuary;
- ❑ You may wish to consult with a prior actuary - get the Principal's consent first;
- ❑ You should cooperate with an actuary who takes over a Principal's account, unless you have a pre-existing agreement with the Principal to the contrary.





# Advertising

## Precept 11

- Do not engage in advertising or business solicitation that is false or misleading in any medium:
  - Includes any communication that may directly or indirectly influence a person's or organization's decision whether, and from whom, to obtain actuarial services.





# Advertising (cont'd)

- Violations of this precept are more likely to be due to “business solicitation activities” than due to “advertising.”
- Be very careful about criticizing other actuaries when trying to obtain an assignment.
- If you were a consultant looking for work and you told a potential client you could do some analysis “faster, cheaper and better” than the consultant who did it before without having reviewed any of the prior consultant’s work, you may have violated this Precept.
- Why? Because, presumably, you do not know anything about the work of the previous consultant...you do not know how much time the analysis would take until you get the assignment, you do not know the fee the prior consultant charged, nor do you know the quality of the work (since work papers are not available to you). You have made false and misleading representations.





# Titles and Designations

## Precept 12

- Use membership titles and designations only as authorized by your organizations:
  - A “title” is a position (e.g., committee chairperson);
  - A “designation” is a class of membership (e.g., ASA, FSA, or MAAA).





## Titles and Designations (cont'd)

- If you start using your associateship designation after passing the necessary exams, but BEFORE you have received notice from the relevant organization that you have been admitted into the organization, you have violated this precept (and may never ever get in!).
- Alternately - if you stop paying your dues and your membership terminates but you continue to use the designation...you have violated this precept.
- If you mislead someone into thinking you are a fellow (maybe by simply indicating that you are an actuary or credentialed actuary), but you are not, you have violated this precept.







# Violations of the Code

## Precept 13

An Actuary with knowledge of an apparent, unresolved, material violation of the Code by another Actuary should consider discussing the situation with the other Actuary and attempt to resolve the apparent violation. If such discussion is not attempted or is not successful, the Actuary shall disclose such violation to the appropriate counseling and discipline body of the profession, except where the disclosure would be contrary to Law or would divulge Confidential Information.





# Violations of the Code (cont'd)

## Precept 13

- This Precept offers some guidance to you when you are involved in a confidential situation. If you know of material violations of the code, you **MUST** report them...UNLESS such disclosure would violate some confidentiality agreement or be contrary to law.
- This is different in England and Canada. There, you are obligated to turn in the violator, even if you are covered by a confidentiality agreement...in those jurisdictions the obligation to the public overrides obligations to employers.
- Example: You are reviewing the actuarial report underlying a statement of actuarial opinion. The report includes some blatantly inappropriate assumptions with inadequate documentation. If the work had been done correctly, the actuary would not have been able to issue an unqualified opinion. You now know of a piece of bad practice and you are obligated to contact the opining actuary or consult with the ABCD to determine if discipline is appropriate.





# Violations of the Code (cont'd)

## Precept 13

- ❑ Pursuant to Annotation 13-1, material violations are those deemed to be important or to affect the outcome of a situation, as opposed to a violation that is trivial, does not affect an outcome, or is merely of form.





# Violations of the Code

## Precept 14

- An Actuary shall respond promptly, truthfully, and fully to any request for information by, and cooperate fully with, an appropriate counseling and disciplinary body of the profession in connection with any disciplinary, counseling or other proceeding of such body relating to the Code. The Actuary's responsibility to respond shall be subject to applicable restrictions on Confidential Information and those imposed by Law.





# Violations of the Code (cont'd)

## Precept 14

- Role of the ABCD
- ABCD process is not an adversarial one but is designed to allow an actuary to talk directly with other actuaries.
- Proposed changes to the disciplinary process.





# Violations of the Code (cont'd)

## Precept 14

- The ABCD does not want to play the role of enforcer. They want to be reasonable and work to effective resolution of all situations they are presented.
- Some people will not respond to ABCD calls or inquiries fearing the worst. This is an error, not to mention a violation of Precept 14. Work with the ABCD to get your side of a disagreement understood and seek polite, amiable resolution. Don't be a disappearing actuary. One actuary has fled the country, never been located for hearings and was expelled from his member association.





# How to Use the Code in Uncertain Times

- Same as always – the Code is your friend!
- Review the Code at least annually
  - Can fulfill part of your 3 hours professionalism CE
- Increase awareness in your organization
  - Incorporate references to Code and ASOPs in Actuarial Communication
  - Increase understanding of your professional requirements with non-actuaries
- When in doubt, seek advice of a peer and/or the ABCD





# Questions?

