Comments of the Center for Economic Justice

Proposed VM-50 – Experience Reporting

Submitted to the Life Actuarial Task Force
June 23, 2011

The Center for Economic Justice (CEJ) offers the following comments on proposed VM-50 regulation for principles-based reserving experience reporting.

Voluntary Data Submissions versus Data Reporting Required by Law

As a preliminary comment, the specification of data reporting in these proposed rules is for regulatory purposes pursuant to statutory language. These are not data voluntarily submitted by insurers, but data reporting required by law. This is significantly different than prior data collection programs for mortality studies, which involved voluntary participation by insurers with regulator input. There are important differences between a program of voluntary data reporting not required by statute or regulation and data submissions required by statute and regulation.

For example, data reported to regulators becomes a government record, subject to public information law requirements and protections. Once submitted, the data are not property of the reporting companies, but are government records.

Another difference is that, under regulatory data collection requirements, the statistical agent is the agent of the regulator and not the agent of the reporting companies. The companies are reporting data to the regulator through the statistical agent. The regulator has established data reporting requirements and appoints a statistical agent for assistance.

Role of Professional Actuarial Organizations

The proposed VM-50 creates a special role for, and grants special authority to, professional actuarial organizations. This is highly inappropriate for several reasons. Professional actuarial organizations cannot have special access to data because they are private organizations and not government entities. If regulators want professional actuarial organizations – or any other private party or consultant – to review the data, that work must be done pursuant to a contract that specifies requirements for confidentiality, conflicts of interest and anti-trust issues.

It is unclear why the proposed VM-50 confers a special status on professional actuarial organizations. Under the proposed VM-50, the professional actuarial organizations are simply providing consulting services, services that any number of private organizations would offer pursuant to contracts with strict confidentiality provisions.

Granting special role to actuarial organizations has two major problems:

1. It delegates government responsibility to unaccountable private organization (especially true for section 4F2c); and
2. It creates conflict of interest and anti-trust problems. Actuaries performing these tasks, including actuaries with access to transaction-level data, work for a number of insurance companies. There are both potential conflict of interest and anti-trust problems. The conflict of interest exists because the actuary may be influenced by his employment in the performance of the work for the actuarial firm. And the anti-trust problem exists because the actuary may be in the position to have access to confidential data of competitors.

The explanation that actuaries leave their employment at the door when they perform work for an actuarial organization is not credible. That assurance simply does not eliminate or even mitigate the potential conflict of interest or anti-trust problems. Consider this proposal: the NAIC delegates the job of detailed analysis of confidential annual statement data – and decisions about what annual statement data should be made public – to a professional organization of insurance company chief financial officers (CFOs). The CFO's pledge that they leave their employers' interests at the door when they perform work for the professional CFO organization. Such a proposal would not be taken seriously.

Attached is a letter recently sent by the Consumer Federation of America to the Department of Treasury in response to a letter, with recommendations, submitted by the American Academy of Actuaries Flood Insurance Subcommittee to the Department of the Treasury regarding the National Flood Insurance Program (NFIP). The CFA letter cites an obvious conflict of interest by the professional actuarial organization:

> Despite these claims of "objective expertise," the letter recommends (incorrectly, in my opinion) that the "NFIP could potentially benefit from purchasing reinsurance" without disclosing that the Chair of the committee signing the letter is employed by Swiss Reinsurance. The other four committee members include two representatives who are Write Your Own insurer executives (for policies backed by the NFIP), one who specializes in securitizing risk for insurers, and a person employed by FEMA. I would be happy to provide you with many other examples of AAA selling "objectivity" without disclosing conflicts.

Submit versus Report or File: The Purpose of a Regulation

The ACLI has taken the position that the only word used in VM-50 for the submission, filing or reporting of data by insurers should be "submit" because that is the word used in the enabling statute and the regulation should track the statute. In fact, ACLI believes there is a difference in the meaning of "submit" and "file" or "report."

The ACLI is incorrect on both counts. The purpose of a regulation is to implement a statute and to make operational the general statutory requirements into specific and concrete requirements. If all the words used in a statute were clear and complete, there would be no need for a regulation. If everyone had a common and complete understanding of "experience reporting," there would be no need for VM-50 or VM-51 because all parties would know what to do. In fact, the VM-50 and VM-51 regulations must be developed to explain and implement experience reporting.

Consequently, if there is ambiguity about a statutory term, then the regulation must clarify that term or there will be uncertainty and ambiguity among regulators and reporting insurers. ACLI obviously understands this, as evidenced by their proposals to add language explaining confidential information. Yet, when it comes to using "file" or "report" in VM-50, ACLI objects and argues for the use of "submit" only. If ACLI believes that "submit" has a different meaning than "file" or "report," ACLI should explain what it thinks that difference is and, if the working group agrees, that difference should be defined in VM-50. On the other hand, if the working group believes that "submit," "file," and "report" have the same meaning in VM-50, all the terms should be used.

Specific Comments by Section

VM-50 Section 1 D: Drafting Note: *The intent is to use the NAIC's current secure method of transmitting information to regulators instead of paying a statistical agent to create and maintain a separate system for experiencing studies.*

This drafting note stands out loudly. A good portion of the proposed VM-50 is devoted to explaining and specifying the role of the statistical agent. Is the intent of the drafting note that the NAIC will be the statistical agent? Or that the statistical agent data collection model will not be used?

VM-50 Section 3b2: *To ensure that the experience reporting requirements will continue to be useful, the NAIC Task Force or Working Group will seek to review it regularly. The Task Force or Working Group should have regular dialogue, feedback and discussion with the broad range of data users (regulators, actuarial staff of professional actuarial organizations, large and small insurers, and insurance trade organizations).*

The list of data users should include consumer organization, academics and policymakers.

VM-50 Section 3C Role of Professional Actuarial Organization

There is nothing in this list that cannot be accomplished by simply authorizing regulators to hire consultants or contractors with requirements for strict confidentiality agreements and conflict of interest provisions. Then, regulators could contract with consulting firms or actuarial organizations which have the skills to provide the required services and can comply with confidentiality, conflict of interest and anti-trust requirements.

The title of Section 3C should be changed to "Role of Consultants Under Contract With Regulators and the NAIC" and Section 3C(1) should be deleted.

VM-50 Section 4F: *Data submitted by a company to a statistical agent is owned by the company that submitted it. The statistical agent has the right to perform studies and produce reports based upon the data submitted by companies.*

As explained above, data submitted to a regulator – even submitted through a statistical agent – become government records once submitted. Data submitted to a statistical agent are data submitted to the insurance regulator and the statistical agent is the agent of the regulator. First, the data, once submitted, are a government record and subject to public information law. Second, the statistical agent has no authority other than the express responsibilities assigned by the regulator. A statistical agent is not an advisory organization providing loss cost analyses, although there are organizations which perform both functions.

VM-50 Section 4F: Access to Experience Data and Section

There are numerous problems with this section, including delegation of government authority and responsibility to private professional actuarial organizations.

There should be two categories of information – public and non-public. Non-public, or confidential, information includes transaction level data with personally identifiable information. Public information includes any aggregate data compilations with no personally identifiable information. Information between these two ends of the spectrum includes transaction data with personally identifiable information and/or company identification removed and aggregations with company identifiers. Data – raw or compiled – must be categorized as public or non-public and treated accordingly. If public, then any member of the public has the right to obtain the information. If non-public, then no member of the public has the right to obtain the information. If a regulator seeks assistance in the evaluation or analysis of the data, then the regulator must contract with the assister in a manner that protects confidential information, avoids conflicts of interest and avoids anti-trust concerns.

The special role awarded to professional actuarial organizations (PAOs) violates public policy in at least two ways. First, the proposal delegates authority to PAOs:

> *Regulators would authorize the release of the aggregated data to Actuarial Professional Association(s) for research studies. The Actuarial Professional Association determines which portions of category 3 data will be released to the public as category 4 data.*

Government is responsible for enforcing public information laws. Government cannot and should not delegate such a responsibility to any private organization and certainly not to a private organization in which conflicts of interest and potential anti-trust violations exist.

Second, as explained above, the role of assisting regulators in ensuring data quality and compiling data into information useful for regulators, industry, consumers and policymakers should be that of a consultant with contractual responsibilities for data confidentiality and with provisions to avoid conflicts of interest and anti-trust violations. Awarding this role to PAO's, as in the proposed regulation, provides none of these protections and, in fact, creates greater potential for conflicts of interest and anti-trust violations.

VM-50 Section 3G: *G. Ownership and Maintenance of Experience Data and Statistical Reports 1. Data records submitted by companies to the statistical agent are owned by the companies submitting such data records.*
Drafting Note: *This is the case for current voluntary studies.*

This regulation is not a set of guidelines for a voluntary study. The regulation is instructions for data submitted to a regulator pursuant to regulatory requirements. They are government records upon submission.

Consumer Federation of America
1620 I Street, N.W., Suite 200 * Washington, DC 20006

June 20, 2011

Hon. Jeffrey A. Goldstein
Under Secretary for Domestic Finance
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220-0002

Re: Federal Advisory Committee on Insurance

Dear Secretary Goldstein:

On June 8, 2011, the American Academy of Actuaries (AAA) sent you a letter requesting that "individuals with direct actuarial experience" be included on the proposed Federal Advisory Committee on Insurance (FACI). As an actuary and member of the American Academy of Actuaries myself, I do not agree that actuaries need to be on the FACI. This is not to say that actuarial expertise is not needed in your work. It is. However, actuarial expertise is much more suited for subcommittee or staff functional work, for getting into the details under the direction of the members of FACI, than in determining public policy.

Furthermore, I urge you to be very careful when selecting actuaries for such a purpose. The vast majority of actuaries are in the employ, directly or indirectly, of the insurance industry and have a direct conflict-of-interest when making independent decisions.

To make matters worse, the AAA does not disclose any potential conflicts-of-interest regarding persons on their committees that make recommendations to state and federal public policymakers. (Despite repeated requests from me that they do so.) Often, the AAA committees are dominated by people who have a vested interest in the outcome of the recommendations. For example, on May 4, 2011, AAA sent the attached letter to Congress on the National Flood Insurance Program (NFIP). In the letter, AAA takes positions on several matters that support insurers. The letter describes AAA as follows:

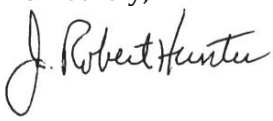
> The American Academy of Actuaries is a 17,000-member professional association whose mission is to serve the public and the U.S. actuarial profession. The Academy assists public policymakers on all levels by providing leadership, objective expertise, and actuarial advice on risk and

financial security issues. The Academy also sets qualification, practice, and professionalism standards for actuaries in the United States.

Despite these claims of "objective expertise," the letter recommends (incorrectly, in my opinion) that the "NFIP could potentially benefit from purchasing reinsurance" without disclosing that the Chair of the committee signing the letter is employed by Swiss Reinsurance. The other four committee members include two representatives who are Write Your Own insurer executives (for policies backed by the NFIP), one who specializes in securitizing risk for insurers, and a person employed by FEMA. I would be happy to provide you with many other examples of AAA selling "objectivity" without disclosing conflicts.

While actuarial expertise is important for FAIC's work, actuaries need not be on the FAIC itself. Moreover, in obtaining any actuarial assistance for the FAIC, I urge you to select actuaries who do not have conflicts-of-interest and are independent of insurance industry influence.

Sincerely,



J. Robert Hunter
Director of Insurance