

**CEJ Comments on VM-50 Proposed Amendments 9 through 12**  
**September 12, 2011**  
**Submitted by Birny Birnbaum**

I am traveling during tomorrow's VM-50 call and will not be able to join the call. I respectfully request that the subgroup consider the following written comments on Amendments 9 through 12 during the call tomorrow. Comments on each amendment are set out on separate pages.

**Amendment 9:**

ACLI proposes the deletion of the following sentence from Section 4. G. 2:

*Except as limited by this section, the statistical agent has the right to use validated data to produce aggregate reports which are the property and responsibility of the statistical agent.*

CEJ **agrees** with this amendment. This activity – producing aggregate reports which are the property and responsibility of the statistical agent – is that of an advisory organization and not of a statistical agent. The statistical agent is the agent of the regulator and has no ownership rights of data submitted by regulated entities to the regulator.

**In addition, we urge that the following also be deleted**

*However, a company may provide a waiver to the statistical agent relative to disclosure of its proprietary information (e.g., mortality ratio by plan of experience). The statistical agent is obligated to satisfy such requests for disclosure if the reason for disclosure is to facilitate inclusion of a company's experience in intercompany studies conducted under auspices of a staff member of the Society of Actuaries*

**Drafting Note:** *The purpose of the waiver is to allow the group generating experience studies right to investigate experience.*

This provision improperly delegates a regulatory function and authority to a private organization with insufficient oversight of that private organization. The statistical agent is the agent of the regulator and should be required to act only upon direction of the regulator or court order. If an intercompany study is sought by a company or companies, then the statistical agent should produce the required data at the direction of the regulator and, if the resulting data contain confidential information, those data should be analyzed by an entity specifically authorized by the regulator with appropriate safeguards for conflict of interest and data protection. If the required data do not contain confidential information, those data should be made available to the public so any interested party can perform an analysis.

We note that ACLI states that the statistical agents are operating under the authority of the Valuation Manual. In fact, the statistical agent is operating under the authority of the regulator who appoints the statistical agent and pursuant to the procedures set out in the Valuation Manual. ACLI persists in positing a mythical authority other than that of the regulator.

## **Amendment 10**

ACLI proposes the deletion of the following sentence from Section 4. H. 1.b:

A historical report listing those insurers whose data for the statistical agent was excluded from the compilation because it fell outside of the statistical agent's tolerances for missing or invalid data, ~~or because the insurer was unable to reconcile its statistical and financial data within the statistical agent's tolerances,~~ or for any other reason. The report will list such excluded companies by year for the current and the two prior annual reports and will include an indication of the exposures, number of claims, and amount of claims for comparable groups of policies.

CEJ **opposes** this amendment. The requirement to reconcile financial and statistical data is essential for reviewing the reasonableness, accuracy and completeness of the reported statistical data. Such reconciliation is a standard feature of statistical agent data quality review. Financial data are typically the only public source of information available for reconciliation to statistical data. In addition, the phrase "or any other reason" could include the failure of reconciliation. Consequently, removing the phrase would not eliminate the statistical agent's ability or authority to require reconciliation and report an insurer's inability to reconcile data.

Our recollection is that this proposal was previously discussed and rejected by the subgroup.

**In addition, as set out in our June 23, 2011 comments, CEJ proposes the deletion of 4.G.1.**

*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. Data submitted to a regulator has confidentiality protections associated with public information law provisions, which are important safeguards for reporting companies.

## **Amendment 11**

ACLI proposes the deletion of Section 4.I – Failure to Meet Standards and 4.J – Granting of Exceptions for Individual Statistical Agents.

CEJ **opposes** the deletion of Section 4.I. and **supports** the deletion of Section 4.J.

ACLI's rationale for the deletion of 4.I is "The Valuation Manual should not define regulatory action parameters – that is a function of state law or regulation."

The VM is, in fact, a regulation – it is adopted by the regulator pursuant to administrative procedures and has the force of law. The VM should set out regulatory standards and consequences for failing to meet required standards. **We suggest the addition of the following at the end of current Section 4.I.1:**

Upon a finding of substandard quality, the commissioner may take appropriate action to ensure accurate data reporting, including, but not limited to, imposing fines, if the fines are established by rule.

## **Amendment 12:**

ACLI proposes a number of changes to Section 5: Reports Available from Statistical Agents: Summary

CEJ **opposes most** of the proposed amendments and **supports some** other proposed amendments.

In 5.A.1 **CEJ agrees** with the amendment in the first line to refer to the VM and not adopted by the states. The VM will be adopted by the states.

In 5.A.1, **CEJ opposes** the deletion of “reports” on the second line. We do not object to “reports and databases as defined in the valuation manual.”

The title of the section is “Reports Available from Statistical Agents.” Consequently, it is illogical to prohibit the statistical agent from producing a report. The proposal is also problematic because it suggests a clear delineation between a report and a database and it is unclear what would be prohibited as a report.

In 5.A.1 **CEJ opposes** the proposed addition on lines 3 and 4. The previous comment (reports and databases) covers the statistical agent. Professional actuarial organizations are private entities and should not be granted special access to data, reports or databases or be identified with special privileges for data review.

In 5.A.1 **CEJ opposes** the remaining proposed changes with the exception of changing “each 5 years” to “with no more than five years since initial adoption or prior review.”

In 5.A.3. **CEJ supports** the proposed change.

In Section B.1, **CEJ opposes** the proposed change. CEJ agrees that standard reports should be designed by the NAIC Task Force. We disagree that individual regulators be prohibited from requesting non-standard reports or data compilations from the statistical agent. The statistical agent is designated by the regulator to serve the regulator’s needs. A regulator asking for a non-standard report or compilation is not burdening reporting companies as the request does not involve additional data collection – only a non-standard compilation of data already reported. There should be a sharp distinction between an individual regulator asking the statistical agent for a non-standard report of existing data – which is clearly a reasonable and necessary right of the regulator – and an individual regulator asking for a non-standard reporting format requiring new data to be reported. The latter should be limited to the NAIC Task Force.