

Comments of the Center for Economic Justice Regarding Proposed VM 50 and VM 51

September 26, 2011

CEJ writes with further comments on the proposals for a special role for professional actuarial organizations in VM 50 and VM 51, categories of data access and to respond to the proposals of Tom Rhodes on behalf of the MIB.

Discussion on the conference call of September 20, 2011 made clear that the activities of the Society of Actuaries on life insurance mortality tables are those of an advisory organization. Individual SOA members, whose employers have a financial interest in the outcome of the mortality tables, employ actuarial judgments regarding the creation of products created from the reported data. With due respect to the SOA and AAA, there is a conflict of interest in their work which cannot be eliminated simply by members agreeing there is no conflict of interest. We attach a discussion of the limitations of the organizations' conflict of interest policies.

We have no objection to the SOA or the AAA assisting regulators with cleaning, compiling and analyzing data submitted by insurers pursuant to VM50 and VM51, but strongly object to awarding these organizations special status and special access in those regulations. The SOA and the AAA can assist regulators, just as Milliman, Towers Watson and other organizations assist regulators – pursuant to specific assignments with strict confidentiality, anti-trust and conflict of interest safeguards.

As we have mentioned before, VM 50 and VM 51 represent a significant change in the collection of data from life insurers for regulatory purposes. Historically, life insurers volunteered to submit data to a private organization – MIB – and SOA and AAA members assisted regulators in working with these voluntary efforts. VM 50 and VM 51 are regulatory requirements and, consequently, require different institutional arrangements than the prior voluntary activities.

Consistent with these comments, we oppose the most recent proposals from Tom Rhodes. We acknowledge Tom's efforts to respond to the concerns of CEJ and regulators, but the proposals continue to vest the statistical agent with rights independent of specific authorities conferred by regulators and continue to confer special status and access to data to professional actuarial organizations.

Tom's proposal for Section 3 C 1 continues to identify "designated professional actuarial organizations" as playing the same role as the SOA/Academy played in the past. This is not necessary or desirable. If a statistical agent needs assistance from subject matter experts for reviewing data for accuracy and completeness, the statistical agent can hire such experts as employees or consultants, subject to confidentiality, anti-trust and conflict of interest safeguards.

If regulators and their statistical agent need assistance in converting reported data (which has been reviewed for accuracy and completeness) into reports, tables or compilations, the regulator can hire subject matter experts to assist in that activity, subject to confidentiality, anti-trust and conflict of interest safeguards.

The fact that SOA and AAA have provided these types of assistance in the past does not mean they must provide it in the future or they must provide it in the same manner they have provided it in the past. The SOA or AAA can propose to provide these services in competition with any other qualified organization wishing to provide those services.

We also oppose Tom's proposal for Section 4F regarding data access because it continues to enshrine a special role and special access for professional advisory organizations and because it creates too many categories of data access. Our proposal for data access is simple and grounded in the facts that data submitted to a statistical agent become government documents upon submission and are, consequently, subject to the protections of states' public information laws – which all protect data revealing individual personal information and insurers' trade secrets from public disclosure.

There should be two categories of data – confidential (non-public) data and public data. The only entities who may have access to confidential data are the government agencies requiring the data submissions and any organizations assisting the regulator with the collection and use of those data, including the statistical agent, auditors and subject-matter consultants. Of course, reporting companies will have access to their own data. Public data are available to any member of the public. VM 50 and VM 51 should identify data that are clearly confidential (non-public) and identify reports or compilations that are clearly public.

Thank you for your consideration.

A Review of Conflict of Interest Policies of the Society of Actuaries and American Association of Actuaries

In response to CEJ's earlier comments, the SOA and AAA argued that both organizations address potential conflict of interest with strict policies and procedures. CEJ does not question the intent of either organization to assist regulators and policymakers on insurance issues, but our review of the organizations' conflict of interest policies and procedures are without substantive protections against conflict of interest. This is not a criticism of the organizations; rather, our review provides further evidence that statistical agent and data collection regulations (VM50 and VM51) for principles based reserving should not confer special status and data access to "professional actuarial organizations."

In response letters to CEJ's comments, AAA stated it has rigorous and detailed policies and procedures to safeguard against and to address any actual or potential conflicts of interest. The SOA referenced Conflict of Interest Precepts outlined in the SOA's Code of Conduct.

In fact, the policies are weak and without substance. The AAA letter refers to a Conflict of Interest Policy. That policy document provides no substantive conflict of interest safeguards and simply states:

Members who work on the Academy's behalf must carefully consider and address any situation that may arise with respect to the members' activity, or the activity of any member working with them, which may call into question their professional objectivity.

Members should comply with the Code of Professional Conduct whenever they provide services to the Academy. Members should familiarize themselves with the paper "*Conflicts of Interest When Doing Volunteer Work*" published by the Council on Professionalism in 2011, which discusses conflicts of interest.

This paper – "A professionalism discussion paper" – also provides no substantive safeguards against conflict of interest. The paper states:

A straightforward example of a conflict of interest is that of a judge who is related to someone appearing before him. In such a situation the judge would disclose the relationship and recuse himself from the case.

This applies to every AAA member of an Academy working group or task who is employed by an insurer or other organization affected by the outcome of the working group's activity. Obviously, members who work for insurance companies have a conflict of interest in development of mortality tables and other advisory organization-type activities like smoothing raw data and defining margins. The paper continues:

Precept 7. An Actuary shall not knowingly perform Actuarial Services involving an actual or potential conflict of interest unless:

- A. the Actuary's ability to act fairly is unimpaired;
- B. there has been disclosure of the conflict to all present and known prospective Principals whose interests would be affected by the conflict; and
- C. all such Principals have expressly agreed to the performance of the Actuarial Services by the Actuary.

Precept 7, although it did not specifically consider volunteer work when it was created, can be interpreted to mean that when a volunteer performs work for the Academy, **the Academy may be considered the Principal whose interests could be affected by any conflict of interest.** [emphasis added]

This would mean that if a volunteer had an actual or potential conflict of interest with respect to that mission, they would be required to disclose that conflict to the other members of the committee.

To the extent that such proposed legislation affects the industry in general, no disclosure is necessary, since the potential conflict of interest is understood by the members of the committee, whose goal it is to come up with an objective analysis and recommendation.

The bottom line of these policies and procedures is that conflict of interest is very narrowly defined – much narrower than how conflict of interest is illustrated in the paper – and conflicts of interest are not disclosed to the regulators, policymakers or the public – the target population for the work product of the members. A conflict of interest policy that does not require public disclosure is clearly inadequate; the public must be able to evaluate whether the conflict of interest is sufficient to question the recommendations of the actuary. Having other members, most of whom have the same conflict of interest, judge a member's conflict of interest is not meaningful protection against conflict of interest.