

Comment #13 – 2/23/10 – 3:34 p.m.

I believe there is a critical omission in this Exposure Draft. For the past two years the ASB has posted in the Update, in small print, its plan to repeal ASOP 9 upon finalization of revisions to ASOP 41. That plan is not mentioned anywhere in the ASOP 41 Exposure Draft. How can anyone adequately comment on this exposure draft without knowing this part of the plan?

The proposed revision of ASOP 41 may have some value, but it is significantly deficient as a substitute for ASOP 9. It constitutes a lower bar for our profession.

When the repeal of ASOP 9 was first proposed in 2007 I submitted the following comments. I do not believe the Exposure Draft adequately addresses the deficiencies in 41 as a substitute for 9. In addition, I am disappointed that the intention of the ASB to repeal 9 has been hidden from readers of the exposure draft.

Repeal of ASOP #9: Comments submitted August, 2007.

I have read the EXPOSURE DRAFT on the Proposed Repeal of Actuarial Standard of Practice No. 9 and see that the Casualty Committee has concluded that ASOP No. 9 is redundant with ASOP No. 41 and the Code of Conduct. However, I believe that you have missed three significant items in your comparison of ASOPs #9 and #41. Those items are highly important to regulators. Without comparable language in ASOP #41, or another Standard, on each of these items, ASOP #9 should remain in effect.

There is no doubt in my mind that the Casualty Committee made honest efforts in reaching their conclusion of redundancy. I do offer that the members of the Committee bring their experience from private industry and consulting practice in reaching that conclusion. But I do not see regulatory experience on the Committee. That perspective leads me to a different conclusion. It is unfortunate that the Committee did not have the benefit of current regulatory actuaries' interests regarding ASOP #9.

The Annual Statement Instructions for the statutory Statement of Actuarial Opinion was significantly revised for year-end 2004 opinions and reports. Those Instructions added reference to expectations of consistency in the Statement of Actuarial Opinion, the Actuarial Opinion Summary, and the supporting Actuarial Report, with appropriate ASOPs, specifically identifying the importance of ASOP #9.

Since then, annual Guidance published by the Casualty Actuarial Task Force (CATF) of the National Association of Insurance Commissioners reaffirms the value and importance of ASOP #9, directly quoting the definition of Actuarial Report in Section 2.1.

In June of 2006 the CATF sent a letter to the Actuarial Standards Board with extensive comments on the first exposure draft of what is now ASOP #43. In that letter the CATF

commented on the importance of ASOP #9 to regulators, and its relevance to the proposed standard.

Without notifying the membership of the Academy of these differences, the proposed repeal announcement inappropriately suggests that the standards are comparable. I believe otherwise, and that repeal of ASOP #9 constitutes “lowering the bar” for our profession.

The three items I feel need to be revisited are as follows.

Item 1. Definition of the Actuarial Report. The comparison table in the Appendix notes that Section 2.1 in ASOP #9 is appropriately covered in Section 2.3 in ASOP #41.

The missing element in ASOP #41 is the expectation in the last phrase of ASOP #9 Section 2.1 of “ensuring that the parties addressed are aware of the significance of the actuary’s opinion or findings.”

Why is this important – part 1? The Statement of Actuarial Opinion is an important regulatory document. The statutory requirement means that the regulator is one of the parties addressed. With a required Opinion and a required supporting report the NAIC also makes a strong statement of reliance on the professionalism of actuaries. Supporting reports are often used and relied upon in financial examinations. The ability to use a report in this way can provide a significant cost benefit to a company. When a report does not adequately provide the regulator with the significance of the actuary’s findings, other more costly examination procedures are needed. The language of ASOP #41 lowers the bar by placing the burden on the reader to figure out on one’s own what the actuary considers significant in reaching an opinion.

Why is this important – part 1? Regulators rely on qualified actuaries to render opinions. Each year nearly all opinions are rendered as reasonable. Occasionally things turn out to be not as they seemed. Sometimes a review of the actuary’s work verifies that fortuitous events were at work, or that the risks were clearly identified. Unfortunately, situations do arise in which questionable work by an actuary has delayed appropriate regulatory action. These are the situations that trouble regulators. In such cases a common response from the actuary emphasizes the lowest possible interpretation of compliance with a standard. ASOP #9 places a burden on the PC actuary that has been valuable to regulators and accepted by our profession.

Repealing ASOP #9 lowers the value of our professional standards and would be a disservice to regulation.

Item 2. The comparison table notes that Section 5.2 in ASOP #9 is appropriately covered in Sections 3.1.8 and 3.6 in ASOP #41.

The missing element in ASOP #41 is the expectation in the last two sentences of ASOP #9 Section 5.2 that “Any material changes in sources of data, assumptions, or methods

from the last analysis should be documented. The actuary should explain the reason(s) for and describe the impact of the changes.”

My comments on this item are essentially the same as in item 1. I will not repeat them. But I will offer an example for illustration. See the attached XL file. It is a real example that I have encountered in evaluating actuarial work products. I have adjusted the data so that the company is not identifiable.

Two successive opinions are rendered as reasonable. But the actuary’s indications are significantly below the company carried by about 14% of surplus. That is not apparent in either opinion. It is only revealed in later review of the supporting reports. No range is provided but, again, the actuary renders a reasonable opinion. In comparing the current report with the prior, one finds that certain assumptions have changed, yielding a lower indication. Had the assumptions from the prior report been used in the current report, the difference between the indication and the carried would have grown to about 30% of surplus. The current report makes no disclosure regarding a change in assumptions, or the impact.

- Was this a violation of ASOP #9? I think so.
- Would it be a violation of ASOP #41? No. ASOP #41 sets a lower bar!

Why is this important? The problem regulators will have to deal with if ASOP #9 is repealed is that a small minority of unscrupulous appointed actuaries will continue to act that way. And, unfortunately, some of those on the fence, fearing the loss of a client or the wrath of an employer, will quickly learn that they can buy time with the lowered standards.

Item 3. The comparison table makes no reference to ASOP #9 Section 6.1 Deviation from Standard. ASOP #41 Section 4.2 contains a comparably title section. However, the difference is readily apparent and meaningful. ASOP #9 calls for “an appropriate and explicit statement with respect to the nature, rationale, and effect of such use.” ASOP #41 merely requires that the actuary “be prepared to justify the use of any procedures that depart materially from those set forth in this standard.”

ASOP #9 clearly requires the actuary to be aware of consistency with the Standard. Without the “appropriate and explicit statement” regarding deviation, the actuary is effectively stating that no deviation exists. On the other hand, ASOP #41 lowers the bar by eliminating the need for awareness of consistency at the time actuarial work is done, and within the communication issued. It is up to a reader of the work product to identify a conflict. Even then, it is possible for the actuary to rationalize deviation in hindsight.

Why is this important? It lowers the expectations of the actuary in doing professional work. I do not see why is it so difficult for an actuary to be aware of deviation and to disclose it up front.

Our website proclaims that the Academy serves its members and the public by establishing, maintaining, and enforcing high professional standards of actuarial qualification, practice, and conduct. I hope that we will not change course.

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