

**Comments in Opposition to a Potential Actuarial Standard of Practice on
Property/Casualty Rate Filings**

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Sent via e-mail at comments@actuary.org

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To the Actuarial Standards Board:

I write these comments to express categorical opposition to the development of any Actuarial Standard of Practice (ASOP) on Property/Casualty (P/C) insurance rate filings, for the following reasons.

The views expressed herein are my own and not necessarily a reflection of the views of any organization in which I am a member or participant.

1. Requirements for rate filings are prescribed pursuant to State law, and an ASOP would not add any rigor those requirements or ensure any beneficial outcomes that State requirements do not already produce. Indeed, State law and regulatory guidance takes precedence over ASOPs, as the text of many ASOPs already acknowledges.

2. However, an ASOP may serve to dilute the efficacy of State-based insurance regulation by reducing the diversity of State-specific requirements – some of which facilitate cutting-edge awareness of insurers’ predictive models and other filing innovations and the evaluation of the consumer impacts of such proposals – to the lowest common denominator. ASOPs are by nature broad and general and could not be a substitute for the detailed set of filing-related statutes, regulations, guidelines, and precedents that individual States have developed. Especially in prior-approval jurisdictions, it would be difficult to imagine an ASOP adding any useful aspects that the State had not already considered, but it would be easy to imagine a filer referring to the ASOP as perceived justification for creating a filing that falls significantly short of State-specific requirements.

3. Indeed, as has been observed with other ASOPs related to elements of ratemaking and risk classification in the past, some insurers and insurer-aligned interested parties are likely to use the new ASOP as an attempted shield from regulatory scrutiny, alleging that because certain regulatory inquiries or principles of filing review are not found in the ASOP, they are therefore illegitimate for the regulator to delve into. This has been particularly observed with a prevalent industry remark that because ASOP No. 12 on Risk Classification does not require causation to

be demonstrated, therefore, regulators should not consider questions of causation at all. Many regulatory actuaries have justifiably pushed back against this interpretation, but a Rate-Filing ASOP would create many more openings for certain interested parties to seek to challenge regulatory inquiries instead of appropriately responding to them. These kinds of challenges often will not prevail, but they could bog down the conversation on emerging rating treatments in unnecessary retreading of the same generic territory for many years – time which could have been better spent examining the substance of *specific* rating treatments, models, variables, and supporting data.

4. Currently there is no legal requirement, at least in the majority of jurisdictions, for a credentialed actuary to be involved either in the development of a P/C rate filing or in its review. Having actuaries involved in both roles is, of course, a benefit given the extensive additional technical knowledge and subject-specific expertise that actuaries bring (albeit, not a benefit that is practically achievable in every rate-filing situation). A Rate-Filing ASOP would bind the actuaries but *not* the non-actuaries involved in filing creation and review. This would have an undesirable and unintended effect on the incentives of the principals on both sides of the process. If it is more burdensome to utilize the actuaries in rate filings (because they personally would have to comply with an additional set of requirements to which non-actuaries are not bound), then why not (per the logic that would tempt such principals) opt to develop and process the filings using non-actuaries only, especially if this is permitted by law? It is important to keep in mind that the principals on each side of the rate-filing interaction are concerned about their *own* objectives and requirements being met (the insurer’s business goals and speed to market in a jurisdiction and the regulator’s responsibility to protect consumers and enforce the law, as well as a desire for efficiency in processing an often-considerable filing workload) – and would view the superimposition of another set of requirements by a third interest (that of the promulgators of the ASOP) as an inconvenience and a complicating factor. The promulgators of the ASOP are presumably motivated by a desire to strengthen the actuarial profession, yet the Rate-Filing ASOP would have the opposite effect in practice by discouraging the utilization of credentialed actuaries in rate-filing contexts. For the prospects of the members of the actuarial profession to be advanced, it needs to be as easy as possible for both insurers and regulatory agencies to utilize actuaries in developing, reviewing, and corresponding on rate filings.

5. Because the Rate-Filing ASOP, at least per the wording of the ASB’s exposure document, would appear to encompass the roles of “the regulatory actuary” and “the reviewing actuary”, and because the American Academy of Actuaries is composed predominantly of actuaries practicing within the private sector and employed by regulated entities, a serious concern arises that the creation of a Rate-Filing ASOP would invert the regulator-industry relationship, and would effectively create a situation wherein industry members would be “regulating the regulators” – a scenario that could even be termed regulatory capture. This concern could be averted if the proposed ASOP clearly expresses that it only applies to those actuaries submitting the rate filings, not those actuaries who review the filings on behalf of State regulatory agencies. Those who review rate filings should *only* be bound by the requirements of applicable law and the policies, procedures, precedents, and deliberations of the regulatory agencies whom they represent. All of these aforementioned requirements were developed with the interests of consumers and the general public in mind, whereas there is no guarantee that an ASOP developed predominantly by private-sector actuaries – even persons of the highest integrity –

would have this as its primary motivation. Even exceptional good character and good motives on the part of industry decision-makers cannot be a justification for a situation where they come to “regulate the regulators” – for this would be inconsistent with the very reasons for the existence of insurance regulation in the first place.

6. Especially if the Rate-Filing ASOP binds regulatory actuaries, this leaves an opening for a filing company’s actuaries to allege violations of the ASOP on the part of a regulatory actuary who attempts to inquire regarding certain matters within the filing where there is a disagreement between the company and the regulators regarding the appropriateness of certain treatments. It is important to prevent any situation where filers may be able to utilize this kind of tactic to thwart regulatory reviewers from performing their jobs. Currently, more so than in any prior era, it is imperative for regulators to thoroughly review emerging predictive models and ask new and different types of questions to ensure that long-standing objectives of transparency and fair treatment of consumers are maintained. Hence it is vital to preserve an environment in which questioning of new filing methodologies and new types of rating classifications – an activity to which regulatory actuaries are uniquely suited – does not carry with it the potential for personal adverse consequences.

7. Especially given the NAIC’s ongoing efforts to express regulatory predictive-model-review best practices / guidance – as exemplified by the white paper in progress regarding the Regulatory Review of Predictive Models – the proposal for a Rate-Filing ASOP appears to be duplicative and to create parallel and potentially conflicting standards with those expressed in the NAIC guidance. The NAIC guidance explicitly recognizes the sovereignty of individual States and the ability of individual States to tailor the NAIC guidance to their own unique contexts. The Rate-Filing ASOP, on the other hand, is vulnerable to becoming a one-size-fits-all approach. Furthermore, the simultaneous existence of the NAIC white-paper guidance and the Rate-Filing ASOP could engender confusion among both filers and regulators.

8. The entire project for a Rate-Filing ASOP appears to expand the domain of ASOPs beyond the context in which they are useful or beneficial. It is reasonable to have ASOPs that articulate guidelines for behavior in areas where only private parties are involved, or areas where the law is straightforward and highly consistent across States (as is the case, for instance, with regard to annual Statements of Actuarial Opinion pertaining to loss and loss-adjustment-expense reserves carried on insurers’ NAIC P/C Annual Statements). However, in areas where the requirements of law and the guidance of regulators are both highly varied and highly detailed, an ASOP drafted predominantly by private parties can only undermine the objectives of the regulatory process. I fully support the concept of a self-regulating actuarial profession – but that self-regulation must always subordinate itself to the *official* regulation that States perform in the course of reviewing and making decisions on insurers’ P/C rate filings. Where the official regulation has clearly expressed itself, the self-regulation needs to take a step back and let the regulators regulate as they know best.

9. Existing ASOPs already address such areas relevant to ratemaking as risk classification (ASOP No. 12), trending (ASOP No. 13), credibility (ASOP No. 25) expense provisions in ratemaking (ASOP No. 29), profit and contingency provisions and cost of capital (ASOP No. 30), catastrophe losses (ASOP No. 39) – as well as other areas that would be applicable in a

ratemaking context. I do not see any reason that insurers' actuaries would need any additional ASOP-style guidance for rate filings in particular that would not be encompassed by the guidance in the aforementioned concept-specific ASOPs. Both insurers and regulators who wish to draw upon ASOPs for any portion of their work product or the justification thereof already have an ample and extensively developed set of provisions to reference.

For the aforementioned reasons, which I understand resonate significantly with various other regulatory actuaries and consumer advocacy groups, I recommend that the Actuarial Standards Board discontinue any attempt at the establishment of any manner of ASOP specific to P/C Rate Filings. An ASOP specific to P/C Rate Filings would not enhance the quality of P/C insurers' filing submissions and could only create potential conflicts and challenges within the regulatory rate-review process.

Sincerely,

A handwritten signature in blue ink that reads "Gennady Stolyarov II". The signature is written in a cursive style with a double underline on the "II".

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