

Ethics for Actuaries: Don't Get Caught in the Middle!



ACOPA

ASPPA® College of Pension Actuaries

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Disclaimer

The views expressed today reflect only the opinions of the speakers. They do not reflect the views of ACOPA. You should solicit professional guidance before relying upon the opinions that are expressed during this webcast.

Helpful Links

Actuarial Code of Conduct:

dev.actuary.org/files/code_of_conduct.8_1.pdf

ASPPA Code of Conduct:

www.asppa.org/Portals/2/PDFs/CodeofProfConductAmended101615.pdf

Circular 230:

www.irs.gov/pub/irs-pdf/pcir230.pdf

ABCD contact information:

www.abcdboard.org/about/contact.asp

Joint Board regulations:

www.irs.gov/pub/irs-utl/regulations2012.pdf

Case Study 1: Big Picture Bob

A. Relevant Guidance:*

1. Precept 1, Professional Integrity – “An actuary shall act...with integrity and competence”
 - Annotation 1-1- “An Actuary shall perform Actuarial Services with skill and care”
2. Precept 2, Qualification Standards – “An actuary shall perform Actuarial Services only when the Actuary is qualified to do so”

*All Precepts are from the Actuarial Code of Conduct unless otherwise indicated

Case Study 1: Big Picture Bob (continued)

3. Precept 13, Violation of the Code of Professional Conduct
 - “An Actuary with knowledge of an apparent unresolved, material violation of the Code by another Actuary...shall disclose such violation to the appropriate counseling and discipline body, except where such disclosure would be contrary to Law or would divulge Confidential Information.”
 - Annotation 13-1- means material and not trivial

Case Study 1: Big Picture Bob (continued)

B. Background

1. Bob is age 60, with 35 years as an EA
2. Earlier in his career, Bob focused extensively on funding, laws, and regulations; less so since PPA, which coincided with his semi-retirement (15 hour/week)
3. He has a lot of other, non-actuarial stuff going on with his firm and his life
4. He is the only actuary on staff

Case Study 1: Big Picture Bob (continued)

5. Bob satisfies his EA CE requirement by attending ASPPA/ACOPA webcasts, but mostly relating to current events and 401(k) administration, since he finds them more interesting than actuarial material – especially since PPA

Case Study 1: Big Picture Bob (continued)

- C. Scenario 1 – Bob just lost his biggest DB plan to a competitor, “Competent Cal,” who is unable to match the prior year actuarial results within five percent. Cal then asks Bob:
1. Why there is no expense load on the NC
 2. Why he didn’t burn credit balance, as required
 3. Why he didn’t report a funding deficiency to the PBGC, as required, and
 4. Why he shouldn’t report Bob to the ABCD under Precept 13, Violations of the Code of Conduct

Case Study 1: Big Picture Bob (continued)

- D. Scenario 2- Alternate Facts – how would this change things?
1. Bob has an experienced team of DB (non-actuary) administrators
 2. Bob has quarterly staff meetings with them, and they discuss recent law/regulation changes
 - a. Even though Bob doesn't take the lead in this discussion (deferring to his experienced QPA), he is still involved and follows along
 - b. Bob worked with his QPA to develop a procedural checklist, which Bob understands

Case Study 1: Big Picture Bob (continued)

3. Although Bob’s actuarial review is cursory, the review system involves a senior administrator reviewing the work of the preparing administrator. Bob “looks at” the materials before signing, to ensure that a sample life has been proofed, and that results are reasonable. He doesn’t check everything.
 - a. Importance of proofing a sample life?
 - b. Ability to check a PV with generational mortality?
4. Key concept – this is a continuum, and Bob’s “qualification” is a matter of degree

Case Study 1: Big Picture Bob (continued)

- E. Also to note – even for actuaries who are at the top of their game, we need to be aware of and sensitive to issues beyond our normal realm
 1. BOY versus EOY techniques
 2. Multi-employer
 3. QDRO
 4. Post-retirement medical
 5. FASB
 6. Testimony

Poll Question #1

Assuming scenario 2, is Bob qualified to continue to sign Schedule SBs?

- A. Yes
- B. No

Case Study 2: Third-Party Certifications

A. Relevant Guidance

1. Precept 3, Standards of Practice -

“An Actuary shall ensure that Actuarial Services performed by or under the direction of the Actuary satisfy applicable standards of practice.”

2. Precept 4, Communication & Disclosure -

“An Actuary who issues an Actuarial Communication shall take appropriate steps to ensure that the Actuarial Communication is clear and appropriate to the circumstances and its intended audience, and satisfies applicable standards or practice.”

Case Study 2: Third-Party Certifications (continued)

3. Precept 8, Control of Work Product -

“An Actuary who performs Actuarial Services shall take reasonable steps to ensure that such services are not used to mislead other parties.”

Case Study 2: Third-Party Certifications (continued)

B. Background

Actuary Tom Trueblue works with TPA firm Trust Us, Inc. on their Defined Benefit plans. The TPA firm does not disclose that Tom is not an employee. The TPA firm handles all contact with the client.

Case Study 2: Third-Party Certifications (continued)

C. Questions

1. Is this a problem for Tom regarding “who is his client?”
2. Does it matter that the TPA firm also runs the Defined Benefit valuations?
3. And provides this information to the client without Tom’s input?
4. AFTAP’s pass through the TPA firm -- what issues may arise?

Case Study 2: Third-Party Certifications (continued)

5. What are the main issues in this kind of arrangement?
 - a. Back office versus transparent
 - b. Quality of data, and
 - c. Internal controls at TPA firm and Tom's firm
 - d. What if Actuary is shown on TPA's letterhead?

Poll Question #2

Does your firm do work for an unrelated TPA?

If yes, is the relationship transparent to the client?

- A. I do work for an unrelated TPA, and the underlying client is aware
- B. I do work for an unrelated TPA, and the client is not aware

Poll Question #3

Does the TPA do any part of the valuation process? If yes, what parts?

- A. Even though the unrelated TPA performs the actuarial work, I exercise a reasonable amount of control over that function
- B. Even though the unrelated TPA performs the actuarial work, I am not able to exercise such control. I only get the finished product to sign

Case Study 3: Fees Unpaid

A. Relevant Guidance:

1. Precept 10, Professional Integrity – "An actuary Shall cooperate with others in the Principal's interest."
 - Annotation 10-5 - Requires cooperation subject to reasonable compensation, can't refuse to cooperate unless pre-existing agreement exists to the contrary
2. Circular 230 section 10.28 - Return of client's records

Case Study 3: Fees Unpaid (continued)

B. Background

1. Wilson has been the EA for the ABC DB plan
2. Wilson provided the 2014 5500 and SB on a timely basis
3. ABC terminated Wilson after the 2014 SB was provided and has not paid for any 2014 work
4. ABC hired actuary Smith and instructed Wilson to cooperate with her
5. Smith asks Wilson for copies of everything (plan documents, 5500s and SBs, AFTAPs and “everything else”)

Case Study 3: Fees Unpaid (continued)

6. Everything Smith is asking for has previously been provided to ABC by Wilson
7. The engagement agreement signed between ABC and Wilson does not mention cooperation with successor actuaries nor does it mention what will be the fees

Case Study 3: Fees Unpaid (continued)

- C. Scenario 1 – Wilson tells Smith that since he hasn't been paid, he does not need to provide her with any of the requested materials
 - 1. What are the issues if Wilson owns the actuarial firm providing services to ABC and Wilson has no employees?
 - 2. What are the issues if Wilson owns the actuarial firm providing services to ABC and Wilson has several employees subject to their own Codes of Conduct?

Case Study 3: Fees Unpaid (continued)

3. What are the issues if Wilson does not own the firm providing services to ABC and the firm is owned by Jones who is neither an actuary nor a member of ASPPA?
 - a. Where Jones instructs Wilson to not provide any information until the 2014 fees plus a reasonable amount for copying costs are paid?
 - b. Where, in addition to a., Jones takes all of ABC's files and places them in his office under lock and key?

Case Study 3: Fees Unpaid (continued)

- D. Scenario 2 – Alternate Facts – how would this change things?
 1. Wilson owns the firm and would not, as had Jones, ask for 2014 outstanding fees to be paid before cooperating with Smith

Case Study 3: Fees Unpaid (continued)

2. However, Wilson does ask for a retainer for the time and effort that will be required to send the requested information to Smith.
 - a. If Wilson has no staff and has to do all of the work, can he ask for a retainer based on his rates as an actuary for all time spent?
 - b. If Wilson has staff, can he charge for clerical time at clerical rates to provide information requested PLUS his time at his rate to decide what portion of the files are responsive?

Poll Question #4

If the actuarial firm's engagement agreement specifically requires payment of all outstanding fees before cooperation with a successor actuary, can the actuarial firm withhold cooperation pending payment?

- A. Yes
- B. No

Case Study 4: Would You Sign This Schedule SB?

A. Relevant Guidance:

1. Precept 1, Professional Integrity – “skill and care” – as before
2. Schedule SB instructions – “To the best of my knowledge, the information supplied in this schedule...is complete and accurate”
3. Circular 230 section 10.22 - Diligence as to accuracy

Case Study 4: Would You Sign This Schedule SB? (continued)

B. Facts

1. Actuary was asked to perform a 2014 valuation
2. He sees a 204(h) notice that was mailed out, which references a plan amendment
3. He has asked for the amendment, but no one seems to be able to find either a signed amendment, an unsigned copy, or the cover letter which would have accompanied it

- C. Questions: Should the actuary sign the SB on the old formula, or on the amended basis? Or not at all? What else can or should he do?

Poll Question #5

How would you handle this Schedule SB?

- A. I wouldn't sign this Schedule SB
- B. I would sign on the pre-amendment basis
- C. I would sign on the post-amendment basis
- D. Other (please elaborate in chat box)

Case Study 4: Would You Sign This Schedule SB? (continued)

D. Analysis:

1. He could always sign it on the pre-amended basis (old formula), and revise it later if the amendment shows up
2. Is there any problem if he chooses to walk away from this when it arises on October 14, 2015? Why or why not?
 - a. In reality, he brought this up several months earlier

Case Study 4: Would You Sign This Schedule SB? (continued)

- E. What if the employer attested in writing that the amendment has been executed? And if she were willing to sign another copy now with the old date but a currently dated corporate resolution?

Case Study 4: Would You Sign This Schedule SB? (continued)

- F. Schedule SB instructions: data is “complete and accurate”
 - 1. Is this complete?
- G. Consider having an ERISA attorney assist you
- H. The plan document should have a section explaining how a plan amendment is adopted. Was it followed? (probably not)

Case Study 4: Would You Sign This Schedule SB? (continued)

- I. 10th circuit court case – Allison versus Banc One
 1. It discussed that large plans typically employ ERISA attorneys, and have formal procedures to amend but small plans do not, so you need to interpret their actions more
 2. So just because 204(h) notice isn't an amendment, it doesn't mean that it could not be construed as such

Case Study 5: Reporting Actuaries to ABCD

A. Relevant Guidance:

1. Precept 3, Standards of Practice -

“An Actuary shall ensure that Actuarial Services performed by or under the direction of the Actuary satisfy applicable standards of practice.”

2. Precept 10, Courtesy and Cooperation -

“An Actuary shall perform Actuarial Services with courtesy and professional respect and shall cooperate with others in the Principal’s interest.”

Case Study 5: Reporting Actuaries to ABCD (continued)

3. Precept 13, Violations of the Code of Professional Conduct -
“An Actuary with knowledge of an apparent, unresolved, material violation of the Code by another Actuary should consider discussing the situation with the other Actuary and attempt to resolve the apparent violation. If such discussion is not attempted or is not successful, the Actuary shall disclose such violation to the appropriate counseling and discipline body of the profession, except where the disclosure would be contrary to Law or would divulge Confidential Information.”

Case Study 5: Reporting Actuaries to ABCD (continued)

B. Facts

Actuary Terry Smith has a takeover plan from actuary Lazy Joe. In preparing the updated valuations, actuary Smith finds many errors that need to be corrected for prior plan years.

Case Study 5: Reporting Actuaries to ABCD (continued)

C. Question: How should actuary Smith proceed?

1. Contact actuary Joe to:

- Discuss?
- Fix prior work?

2. What if actuary Joe:

- Does not respond?
- Will not acknowledge the work needs to be corrected?
- Will not work without payment?

Case Study 5: Reporting Actuaries to ABCD (continued)

3. Assume actuary Joe will not correct prior work. Should actuary Smith report Joe to the ABCD?
 - Approval needed from employer?
 - Other issues/concerns?

Case Study 6: Takeover with “Issues”

A. Relevant Guidance:

1. Precept 3, Standards of Practice
2. Circular 230 section 10.21 – Knowledge of client’s omission
3. Circular 230 section 10.22 – Diligence as to accuracy
4. Circular 230 section 10.33 – Best practices for tax advisors
5. Circular 230 section 10.34 – Relying on information furnished by clients

Case Study 6: Takeover with “Issues” (continued)

B. Background

1. Wilson has been engaged to provide actuarial and administrative services to ABC, a Prof. Corp starting with 2014.
2. The plan was effective in 2011 and covers seven employees of ABC.
3. The prior actuary, G. Fishing, can't be found.
4. The 5500s and Schedule SBs for 2011 through 2013 are available. The SBs were each signed October 7. No AFTAP certifications can be found.

Case Study 6: Takeover with “Issues” (continued)

5. The Schedule SBs for 2012 and 2013 reflect Prefunding Balance increases. No elections with regard to the increases can be found.
6. G. Fishing, the prior actuary, did not ask for detailed trust accounting and relied on the end-of-year asset value reported by ABC to complete the valuations and Schedules SB.

Case Study 6: Takeover with “Issues” (continued)

7. G. Fishing apparently took all accounting and census over the phone because no documentation is in file for any year through 2013.
8. Among the accounting information reported to G. Fishing by ABC is that there were no benefit payments or expenses paid from the plan from inception through the end of 2013.

Case Study 6: Takeover with “Issues” (continued)

- C. Scenario 1 – Before Wilson starts the 2015 valuation he performs a takeover review
 - 1. Other than matching the FT and TNC to within five percent to avoid the need to file with the IRS for a change in funding method, what other historical review is required by Wilson?
 - 2. Should Wilson ask ABC to provide documentation of census for years 2011 (or earlier if compensation is based on years prior to 2011) through 2013, or can he rely on the valuation reports?

Case Study 6: Takeover with “Issues” (continued)

3. Should Wilson ask ABC to provide documentation of trust activity for 2011 through 2013, such as the underlying statements?
4. If Wilson asks ABC to provide either historical documentation of trust activity or census, does Wilson have a duty to examine the information before relying on it?

Case Study 6: Takeover with “Issues” (continued)

5. What client elections can Wilson use or presume in performing his work?
 - a. Assume Wilson is hired sometime in 2015 but before October 15, 2015.
 - b. Alternatively assume Wilson is hired after October 15, 2015 (which recognizes that the 2014 work will be “late”).
 - c. Does it matter if ABC does not remember signing any client elections?
 - d. Does it matter if ABC strongly indicates that no client elections were ever executed?

Case Study 7: Helping a Client?

A. Relevant Guidance:

1. Circular 230 section 10.21 – Knowledge of client’s omission:
 - Requires a practitioner with knowledge of non-compliance to advise the client of the consequences of such non-compliance.
2. Circular 230 section 10.34(b) – Standards with respect to tax returns:
 - Prohibits a practitioner from “allowing” a client to submit a document to the IRS that intentionally disregards the rules and regulations.

Case Study 7: Helping a Client? (continued)

3. Precept 7, Conflict of Interest – “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.”

Case Study 7: Helping a Client? (continued)

4. Precept 9, Confidentiality – “An Actuary shall not disclose to another party any Confidential Information unless authorized to do so by the Principal or required to do so by Law.”
 - “Confidential Information”: Information not in the public domain of which an Actuary becomes aware as a result of providing Actuarial Services to a Principal.

Case Study 7: Helping a Client? (continued)

B. Background

1. You are administering a 401(k) plan for a small law firm
 - a. You notice that the deferrals and loan repayments for the second half of 2014 were all deposited in January 2015
 - b. You ask the client, and are told that she needed to use those funds to keep operating the firm; now that they've been repaid, everything should be "fine"
 - c. You have prepared a 5500 form that indicates that deferrals were submitted late

Case Study 7: Helping a Client? (continued)

- d. She asks you to modify the 5500 which reports them as late.
- e. You get a call from a participant. Upon checking his fund statement, he asks where his 2014 deferrals are?
 - i. What types of responses might you give?
- f. Finally, the law firm owner did not repay her own loan at all. However, she asks you to not prepare a Form 1099 to report that income.

Case Study 8: Should a Range Certification Be Issued?

A. Relevant Guidance:

1. Precept 1, Professional Integrity - “An Actuary shall not engage in any professional conduct involving dishonesty, fraud, deceit, or misrepresentation or commit any act that reflects adversely on the actuarial profession.”

Case Study 8: Should a Range Certification Be Issued? (continued)

B. Background – Scenario 1

1. Larry King is the actuary for MNL, Inc.
2. On March 1, 2015, he certified the January 1, 2015 AFTAP to be 91 percent.
3. As of March 1, 2016, he has not yet prepared the January 1, 2016 valuation. He has reviewed the Plan's assets, which incurred a 50 percent investment loss.
4. In addition, the client lost a major contract, and laid off half of its workforce.

Case Study 8: Should a Range Certification Be Issued? (continued)

5. Actuary King estimates that the AFTAP will be significantly below 60 percent. Rather than wait until the valuation is completed (likely in September), he is considering issuing a range certificate that the plan is less than 60 percent funded.

C. QUERY:

- Can he do this?
- Should he?
- What are the relevant issues?

Case Study 8: Should a Range Certification Be Issued? (continued)

D. Background - Scenario 2

1. On March 1, 2015, actuary King certified the January 1, 2015 AFTAP to be 53 percent. The plan was frozen and lump sum payments limited.
2. As of March 1, 2016, the valuation is not yet prepared, but actuary King knows that the assets have experienced an investment gain of 60 percent. He is certain the AFTAP will be greater than 80 percent.
3. If he issues a range certification, former employees will be able to receive lump sums, and the plan will be unfrozen.

E. Query: Can he do this? Should he?

Case Study 9: Who's the Client?

A. Relevant Guidance:

1. Precept 7, Conflict of Interest – “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.”

Case Study 9 : Who's the Client? (continued)

B. Background

1. You are administering a plan for Betty and Barney Ruble.
2. The engagement letter is signed by both of them, as they are 50/50 owners.
3. You regularly communicate with Betty.
4. However, Barney calls you to advise that they are getting divorced.
5. He also advises that Betty's employment has been terminated, and that he is now the sole owner.

Case Study 9: Who's the Client? (continued)

6. Further, he advises you to not speak with Betty, beyond the normal information that you'd provide to any other terminated employee.
7. Then you get a call from Betty, who would like to know:
 - a. Barney's account balance
 - b. Barney's current year compensation
 - c. His distribution history (after age 59½)
 - d. Actions taken, if any, to terminate the plan, and
 - e. The last few years of W-2 history for the administrative assistant

C. How do you reply?

Questions?