



AMERICAN ACADEMY *of* ACTUARIES

Comment #34 - March 31, 2010 - 5:51 p.m.

Actuarial Standards Board
1850 M Street, Suite 300
Washington, DC 20036-4601

RE: Proposed Revision of Actuarial Standard of Practice (ASOP) No. 41

To Whom It May Concern:

The Pension Committee of the American Academy of Actuaries¹ appreciates the opportunity to provide comment on the Actuarial Standards Board's proposed revision of ASOP No. 41, *Actuarial Communications*.

Our comments on the revised exposure draft focus on the following issues:

- Does the draft standard clearly address the requirements related to the various levels of actuarial communications?
- Is the revised concept of an actuarial report reflected in this draft both clear and appropriate? Are there other types of communications that should be codified in the standard?
- Does the draft language appropriately address situations where assumptions or methods are not necessarily required, but may be specified by a regulatory body, e.g., under a safe harbor rule?
- Does the revised draft incorporate an appropriate emphasis on the need for the actuary to consider the needs of the intended users, i.e., are there additional elements of an actuarial report that should be disclosed to warn about the limitations associated with use by an audience other than the defined set of users whose needs the report is intended to serve?

Does the draft standard clearly address the requirements related to the various levels of actuarial communications?

The application of the draft standard to a formal actuarial communication related to a comprehensive actuarial study (e.g., the communication of annual valuation results for a pension plan) is straightforward and clear. However, in the course of an actuary's work, there are many instances where ancillary and less comprehensive results are communicated and the work products are communicated less formally. In the context of pension valuation work, examples might include: an analysis of plan termination experience, the development of a bond yield curve, or an explanation of various valuation methodology options.

In our review a concern arose as to whether the application of the draft language to the broader range of actuarial communications was sufficiently clear or whether some structural changes would clarify things. As we read the draft language, it seems essentially that any work that an actuary

¹ The American Academy of Actuaries is a 16,000-member professional association whose mission is to serve the public on behalf of the U.S. actuarial profession. The Academy assists public policymakers on all levels by providing leadership, objective expertise, and actuarial advice on risk and financial security issues. The Academy also sets qualification, practice, and professionalism standards for actuaries in the United States.

releases to a client or interested party qualifies as an actuarial finding likely intended to be relied upon and, therefore, for which an actuarial report ultimately should be completed. This implies that the entire range of potential disclosures stated in Section 4.1.3 is applicable unless deemed "inappropriate" by the actuary responsible for the work.

This structuring puts a significant responsibility on the actuary to determine what disclosures are appropriate in a given situation. With regard to the examples of less comprehensive projects stated above, we might imagine that an actuary would typically find many of the listed disclosure items at least unnecessary, but perhaps not inappropriate. Going through the list labeled a through j, the reasoning of that typical actuary might be as follows:

- a. Principal for whom work is done—likely obvious from how the communication is addressed
- b. Intended audience—rarely stated explicitly, likely unnecessary
- c. Scope and intended purpose—seems applicable and should be addressed
- d. Acknowledgement of qualifications—likely unnecessary
- e. Cautions about risk/uncertainty—should be addressed if applicable
- f. Limitation/constraints on applicability—should be addressed if applicable
- g. Conflict of interest—likely inapplicable, unnecessary
- h. Reliance on other information—should be addressed if applicable
- i. Information date—should be addressed
- j. Subsequent events—should be addressed if applicable.

Based on the above, it would appear that of the ten disclosure items, at least three seem unnecessary to these types of ancillary project work, and another four may or may not be applicable in a given situation. Thus, the actuary is placed in a position of making a number of judgment calls with regard to a large cross-section of the stated requirements. The alternative for the actuary would be to include with each actuarial communication a number of essentially "boilerplate" disclosures that may not be of much relevance given the project's scope.

To better address these situations, the standard might be modified to acknowledge the broader range of actuarial projects and clarify how the language in the standard is to apply in each case. This could be done either by:

- Defining two levels of actuarial communications and defining appropriate requirements for each; or,
- Acknowledging the issue with a more general reference and providing more detailed guidance to the actuary as to how to decide which disclosures are necessary in each case. In our view, the use of the word "inappropriate" in Section 4.1.3 would not allow the actuary sufficient leeway in making these judgment calls. Language that uses terminology such as "where necessary given the scope of the actuarial findings" might be more helpful in this context.

Other sections should also provide similar flexibility for the actuary to determine which disclosures are necessary for a given project. For example, Section 4.2 states, "If the actuarial report is in a prescribed form that does not accommodate these disclosures, the actuary should make these disclosures in a separate communication (such as a cover letter) to the principal requesting that both communications be disseminated together where practicable." It is unclear whether the "where practicable" phrase applies to the actuary's distribution of the report as well as the principal's further dissemination of the report. We believe that if the government specifies the form of a report so that it does not accommodate a routine disclosure (such as the assumptions or methods that are

specified by the applicable law), the actuary should be able to rely on the government's prescribed form as representative of a complete communication. As an example, it is generally not necessary, or even advisable, to disclose the full package of actuarial assumptions to participants as part of the annual funding notice under Section 101(f) of the Employee Retirement Income Security Act (ERISA). On the other hand, the actuary may well conclude that it would be appropriate to include a significant limitation on the applicability of the actuarial findings even if the prescribed form does not routinely provide for this disclosure.

Is the revised concept of an actuarial report reflected in this draft both clear and appropriate? Are there other types of communications that should be codified in the standard?

We believe that the concept of an actuarial report is clear and appropriate.

One minor suggestion pertains to the definition of an "actuarial communication" (Section 2.1). As noted in Section 1.2, an actuarial communication includes "an actuarial opinion or actuarial findings." The definition in Section 2.1 similarly should leverage the definition of "actuarial finding" (Section 2.3) rather than referring to a communication "with respect to actuarial services." Arguably, an invoice, for example, may be "with respect to an actuarial service" but is not intended to be an actuarial communication.

Regarding the timing of issuing an actuarial report, Section 3.2 says, "When the actuary intends the findings in an actuarial document to be relied upon by the intended user, the actuary should complete an actuarial report within a reasonable time period agreed to by the actuary and the principal." We appreciate that the proposed language recognizes that a complete actuarial report may need to follow, within a reasonable time period, the communication of an actuarial finding. However, we suggest a slight revision that incorporates language similar to that found in Section 3.1.3 of the current ASOP 41, such as "...within a reasonable time period, unless other arrangements, mutually satisfactory to the parties, have been made."

Does the draft language appropriately address situations where assumptions or methods are not necessarily required, but may be specified by a regulatory body, e.g., under a safe harbor rule?

The rules for prescribed assumptions should apply in situations where the government offers a safe harbor alternative (e.g., the safe harbor assumptions for a plan spinoff under Regulation Section 1.414(l)-1). Accordingly, the language should be clarified in the following sections:

Section 3.3.4.a contains this language: "If the assumption or method is specified by applicable law (statutes, regulations, and other legally binding authority)...." The term "legally binding" should be deleted.

Section 4.2 contains this language: "Where any material assumption or method was prescribed by applicable law (statutes, regulations, and other legally binding authority)...." The term "legally binding" should be deleted and "prescribed" should be changed to "specified."

Another minor issue with respect to prescribed assumptions, is that Sections 4.3.d.1 and 4.3.d.2 do not accommodate the case where the actuary's professional judgment does *not* significantly conflict with the prescribed assumption.

Does the revised draft incorporate an appropriate emphasis on the need for the actuary to consider the needs of the intended users?

The exposure draft uniquely defines that an individual who relies on actuarial findings (Section 2.3) in an actuarial communication (Section 2.1) is the intended user (Section 2.7).

Based on the experience of many actuaries, it is not uncommon for the actuarial communication to be read by other unintended users. The actuary prepares an actuarial communication to fulfill a specific function (or functions) and tailors that communication to meet the needs related to that function and to those of the intended user. The use of that actuarial communication by any persons or entities who are not intended users, i.e., unintended users, may be problematic.

Unintended users are unlikely to have the same level of understanding or sophistication to deal with the actuarial finding as the intended user. Actuarial findings could be distorted by an unintended user or used for functions that are not aligned with the purposes of the study. Also, an unintended user may not have access to the complete actuarial report, as defined in Section 2.4 as the set of actuarial documents available to an intended user.

Thus, it may be prudent to add to Section 3.7 (“Responsibility to Other Users”) that the identification of intended users may also be supplemented by additional limitations on the study’s use. For example, in the context of certification of a pension plan’s adjusted funding target attainment percentage, language such as the following could be useful:

These calculations have been made for compliance with rules under IRC Section 436 to determine benefit restrictions for Plan Year 20XX and cannot be used for any other actuarial cost calculations under other sections of the Internal Revenue Code or ERISA—or to meet any generally accepted accounting principles disclosure requirements under U.S. financial accounting standards or international accounting standards.

The Pension Committee appreciates the opportunity to comment on this matter and would be happy to discuss any of these items with you at your convenience. Please contact Jessica M. Thomas, the Academy’s pension policy analyst (202-785-7868, thomas@actuary.org) if you have any questions or would like to discuss these items further.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. H. Moore', with a long horizontal flourish extending to the right.

John H. Moore, FSA, MAAA, EA, FCA
Chairperson, Pension Committee
American Academy of Actuaries