

Comment #11 – 6/16/09 – 12:19 a.m.

Comments on Proposed Revision of Actuarial Standard of Practice No. 36

Submitted by:

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General Comments

As one of the drafters of the current ASOP 36, I very much support this proposed revision to update the ASOP now that practice has developed considerably under ASOP 36 over the past 9 years. I have read through the comments that were available on the ASB website and I think many of them are worth further consideration by the ASB. I noticed some of the same themes and issues that were discussed at great length in the 6+ years it took to get the current ASOP 36 through to final approval. To the extent that the current ASOP 36 was the result of a consensus and a weighing of the pros and cons, it would seem appropriate to ensure that this revision does not lose the result of the previous ASOP process which included 3 exposure drafts and a public hearing before the final standard was approved.

I agree that this revision of ASOP 36 should:

- (1) Eliminate most of the mainly educational text that was included in the current version;
- (2) Reduce the major inconsistencies or redundancies between ASOP 43 and ASOP 36; and
- (3) Update the ASOP for new developments, such as the definition of an actuarial opinion.

However, I agree with some of the commentators that revised ASOP has eliminated some very good guidance that has been useful to actuaries who have used this ASOP in their practice for many years.

Scope

Sections 1.2 (a) and 1.2 (b) should be combined. I suggest keeping the current language that combines (a) and (b) as follows: “the statement of actuarial opinion is provided to comply with the requirements of law or regulation, or . . .” There does not seem to be any particular reason to specify the NAIC Annual Statement Instructions explicitly since it should be clear that the general statement regarding law or regulation would be applicable to NAIC Opinions. Since the NAIC instructions are subject to change every year, the ASOP cannot be assumed to address all of the NAIC requirements for such opinions. The Academy practice note is changed every year to give actuaries updated information with respect to the NAIC requirements and the ASOP could not be modified every year to address such changes.

Laura Maxwell’s (Pinnacle) comment about differentiating between ASOP 43 and ASOP 36 is well said. I strongly agree with her suggestion that the current ASOP 36 language be put back in “This standard does not apply in instances where an actuary is providing analyses, estimates, information, data compilations, or other actuarial work products unless the actuarial work meets one of the conditions (a) or (b) stated above.” Also, since the new Qualifications Standards now define several such actuarial work products as actuarial opinions, it may make

sense to replace “actuarial work products” with “actuarial opinions” to make it even clearer that not all actuarial opinions are subject to this ASOP.

Regarding the comment from Tom Ghezzi and Alejandra Nolibos regarding the reference to ASOP 20, it may be helpful to replace “the actuary should be guided by both this standard and ASOP No. 20 . . .” with “the actuary should be guided by any applicable standard, including ASOP No. 20 . . .” The comments from the Health Practice Council may also be addressed by this change.

Section 3.4 Description of the Reserves Being Opined Upon

There are several comments regarding the “intended measure of the reserves”. I agree with those comments that it does not make sense for the actuary to identify such an intended measure. However, it seems that the revision was trying to establish some clarity to the basis for the actuary’s opinion. I agree with the commentators that the actuary cannot be responsible for knowing what intended measure underlies the reserves that are provided. However, I believe that the actuary can identify the intended measure(s) that the actuary used as the basis for their opinion. Such a requirement would fit better under section 3.5 rather than section 3.4.

Dropped wording from current ASOP 36

Wendy Germani’s submitted several comments noting sections or wording from the current ASOP 36 that has been eliminated from the proposed revision, namely sections on Qualifications (current 3.1.1), Responsibility of Reviewed Actuary (current 3.8.2), Reinsurance Ceded (current 3.7, proposed 3.11), Actuarial Communications (4.1), and Uncertainty (current 3.6). I strongly agree with her suggestions that such wording be retained in the revision. I do not see anything in the materials requesting comment that justifies removing these sections or key language from the ASOP. I believe that Wendy has many years of regulatory experience in reviewing NAIC opinions and I think the ASB should respect her input on these items.

Kenneth Quintilian also submitted several comments noting references deleted from the current ASOP. He suggests restoring deletions regarding “Appointed Actuary”, current 3.1.2 regarding compliance with laws and regulations, current 3.8.2 duties of the actuary, current 3.6 discussions about uncertainty, current 3.7 and 3.7.1 discussion about gross and net reserves, current 3.10 adequacy of assets, current 4.6 (i) risk margins, and the 4.6 (j) disclosures. I believe all of these references from the current ASOP 36 have significant merit in retaining and I have not seen any justification for their removal due to ASOP 43 or other changes in practice under the current ASOP 36.

Tom Ghezzi and Alejandra Nolibos point out that there is a potentially substantive change in the wording concerning a range of reasonable estimates from the current 3.6.4 to the proposed 3.7.1. The longstanding wording from the Statements of Principles in the current 3.6.4, “a range of estimates that could be produced by appropriate actuarial methods or alternative sets of assumptions that the actuary judges to be reasonable” has been replaced in proposed 3.7 by “a range of estimates that could be produced by an analysis . . . consistent with ASOP 43 . . .”, where ASOP 43 (section 3.7.1) states “The actuary should assess the reasonableness of the unpaid claim estimate, using appropriate indicators or tests that, in the actuary’s professional judgment, provide a validation that the unpaid claim estimate is reasonable.” It appears that it will be much more difficult for the actuary to assess reasonableness under this proposed revision because of the ASOP 43 requirements for “indicators or tests” that provide a

“validation” of reasonableness. More specifically, it appears that “alternative sets of assumptions that the actuary judges to be reasonable” would not meet the requirements of the proposed ASOP, but it seems clear that they would meet the current ASOP 36. This could be a material “raising of the bar” which has not been pointed out. Tom and Alejandra strongly suggest reinstating the current language. I agree with them.

COPLFR also suggest that current ASOP 36 language is preferable to the wording in section 3.6 (*any* applicable materiality guidelines) and section 3.10 (The actuary should consider *whether there is a significant risk...*). Here again the revised ASOP seems to raise the bar which has not been justified.

Laura Maxwell (Pinnacle) suggests keeping language from the current 4.4 for the proposed 3.8.2 (Reliance on Opinions of Other Actuaries). This is a good suggestion.

In general, I strongly believe that the ASB should have a clear rationale and significant justification for the removal of substantive material from an ASOP or a rewording that could raise the bar for practitioners.

There seem to be many individual comments suggesting that the current language for many sections has been adopted into practice and there are concerns that the new wording either creates issues for practitioners or removes language that the users have found is important to them.

Further Comments

I believe that this exposure draft has taken too much out of the current ASOP without clear justification. The input from these comments should be helpful in answering the questions related to whether several sections should be kept pretty much as is. The coordination with ASOP 43 is important, but I don’t believe that many of the other changes have been well received. Also, it is not clear what areas the ASB received input as to what practitioners, or users, thought should be changed and why. I would encourage the ASB to reinstate much of the existing ASOP 36 wording and limit revisions to those that make sense to the actuaries who frequently use the ASOP and to the users of the opinions.