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ASOP No. 41 Revision
Actuarial Standards Board
1850 M Street, Suite 300
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Comment #36 - April 7, 2010 - 7:38 p.m.

Subject: Second Exposure Draft -- Actuarial Standard of Practice No. 41

Mercer is pleased to provide our response to the ASOP 41 second exposure draft. These comments were prepared by Mercer's Actuarial Resource Network, a group of senior actuaries in the Retirement Practice area representing all of the U.S. geographic areas in which Mercer operates, with input and comments from other senior Mercer actuaries.

We would like to thank the Actuarial Standards Board (ASB) for their efforts in this important area. We believe that this draft is a significant improvement over the first draft, with meaningful and substantial progress in the right direction. However, we still have several comments regarding this draft. We have also included responses to the specific questions asked in the exposure draft.

As we noted in our comment letter on the first exposure draft (a copy of our original enclosed), we believe the standard and its value to practitioners would be enhanced by including several examples illustrating the intended disclosures in various situations. Having the ASB's analysis of the intended application of the standard would be beneficial to all actuaries.

Section 3.1.3 – Timing of Communications

The general requirement is to provide an actuarial communication "without undue delay, unless other arrangements, mutually satisfactory to the principal and actuary, have been made." It is not clear from this draft how an actuary might determine what would be considered "undue delay"? Additionally, it should be made clear that in situations where the actuary is not legally required to provide a communication by a specified date, then "other mutually satisfactory arrangements" could include the actuary providing the communication only if and when requested by the principal.

Section 3.2 – Actuarial Report

The second paragraph should clarify that the data used would include the benefit provisions being valued as well as the population included.

Page 2
April 7, 2010
ASOP No. 41 Revision
Actuarial Standards Board

The last sentence of the third paragraph should be replaced with the following sentence: “The actuary should make available to the intended user any or all of documents that comprise the actuarial report upon request.”

Section 3.3.2 – Conflict of Interest

This section requires that the actuary “should disclose in the actuarial communication any pertinent information that is not apparent” regarding a conflict of interest. Is this disclosure required for any potential third party or only for the principal and intended audience?

Section 3.3.4.b.1 – Responsibility for Assumptions and Methods

Section 3.3.4.b.1 sets out a situation where the actuary is using an assumption or method selected by another party and where the actuary is not responsible for the reasonableness of the assumption or method under section 3.3.4.b.1, but where the actuary need not disclose the fact that the actuary is not responsible for reasonableness. In our experience, users of our reports expect to rely on the actuary for reasonableness of assumptions and methods but cannot be expected to detect the absence of a statement about reasonableness by the actuary, with the user being required to accept responsibility for reasonability in that situation. We recommend that sections 3.3.4.b.1 and 4.1.3 be modified to include an affirmative statement about reasonableness by the actuary subject to the conditions of sections 3.3.4.b.2, 3.3.4.b.3, 4.2 and 4.3.

Section 4.2 – Certain Assumptions or Methods Prescribed by Law

Certain filings with the Pension Benefit Guaranty Corporation (PBGC) must be made on prescribed forms which do not allow for the disclosure of all assumptions and methods. Nor does the PBGC desire to receive these disclosures with the normal filing. We agree that the full disclosure of assumptions and methods is appropriate with the plan sponsor, but do not believe that it is appropriate to require that the full disclosure be attached to the filing when not required by the government agency.

Section 4.3 – Responsibility for Assumptions and Methods

Consider the situation where the actuary has provided advice regarding the selection of an assumption that complies with ASOP 27 along with a specific recommendation. However, the recipient of this advice selects a different assumption which the actuary then uses to prepare his report. The selected assumption still falls within the actuary’s reasonable range for that assumption. In this case, even though the actuary did not recommend the assumption, he or



Page 3
April 7, 2010
ASOP No. 41 Revision
Actuarial Standards Board

she should still be able to determine that the prescribed assumption falls within the reasonable range, and make the necessary disclosures (either say nothing, as drafted in the proposed ASOP, or make an affirmative statement that the assumptions are reasonable, as we have recommended). This situation should fall under 3.3.4.b.1 and therefore not require any special disclosure under 4.3 (although an affirmative response would be required based on our recommendations for section 3.3.4.b.1), but an explicit acknowledgment of this point would be helpful.

Specific questions asked by the Actuarial Standards Board

1. *Is the revised concept of an actuarial report reflected in this draft both clear and appropriate?*

We believe that the revised concept is clear and appropriate.

2. *Is the revised ASB position on documentation appropriate?*

Subject to our comments above, we believe the position is appropriate.

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

Yes, subject to our comments about Section 3.3.4.b.1.

Thank you for the opportunity to comment on the exposure draft. If you have any questions, please contact Stephen Alpert (212 345 7588) or myself (212 345 7125).

Sincerely,

Ethan E. Kra, FSA, EA
Senior Partner

Enclosure

The information contained in this document (including any attachments) is not intended by Mercer to be used, and it cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code that may be imposed on the taxpayer.

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January 12, 2009

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Actuarial Standards Board
1100 Seventeenth St., NW, 7th Floor
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Subject: Exposure Draft -- Actuarial Standard of Practice No. 41

Mercer is pleased to provide our response to the ASOP 41 exposure draft. These comments were prepared by Mercer's Actuarial Resource Network, a group of senior actuaries in the Retirement Practice area representing all of the U.S. geographic areas in which Mercer operates, with input and comments from other senior Mercer actuaries.

We would like to thank the Actuarial Standards Board (ASB) for their efforts in this important area, and we agree that updating, aligning and modernizing ASOP 41 is a key priority. It presents an opportunity for the Actuarial Standards Board to improve the general level of actuarial practice by providing strong and clear guidance on communicating the results of actuarial work, taking into account both emerging professional standards and business practices. However, we are concerned that the exposure draft may not be moving in that direction.

The following discussion outlines our concerns and provides suggestions for improvement, as well as responses to the specific questions asked in the exposure draft. After each section of our comments, we have included a box identifying specific recommended changes to the exposure draft.

We believe the standard and its value to practitioners would be enhanced by including several examples illustrating the intended disclosures in various situations. To that end, we have included a few suggested situations in the appendix, along with our analysis of how our proposed changes to the standard would be applied. Having the ASB's analysis of the intended application of either the proposed or final standard would be beneficial to all actuaries.

Definitions

The proposed standard should maintain and work with the existing terminology: **statements of actuarial opinion**, and **actuarial services**. These are both well defined in the qualification

Page 2
January 12, 2009
ASOP No. 41 Revision
Actuarial Standards Board

standards, and well understood by actuaries. Having a third term, **actuarial findings**, is not helpful to practicing actuaries, especially since it creates a circular definition (In the ASOP 41 Exposure Draft, *findings* includes statements of opinion; and in the Qualification Standards, *statements of opinion* include findings.)

As acknowledged in section 3.1, modern actuarial practice is driven as much by *process* (“significant and ongoing communications between the principal and the actuary”) as it is by *product* (an actuarial report). While a “formal report” (as defined) is one example of an actuarial communication, highlighting it as a separate category may have several unintended consequences:

- It is not helpful in illuminating the principles of communication and disclosure that actuaries should be following (these principles are discussed below);
- It focuses solely on actuarial product, rather than including actuarial process; this is contrary to the evolution of current actuarial practice;
- It raises unnecessary questions about what is, and is not, a formal report.

We believe it is time to move past the artificial distinction of a “formal actuarial report,” in favor of the principles that focus instead on the actuarial process – *i.e.*, the cumulative communications with respect to a statement of actuarial opinion.

Exposure draft sections affected:

- 2.7 – *The definition of Statement of Actuarial Opinion should be aligned with the definition in the Qualification Standards*
- 2.2 – *The definition of Actuarial Findings can be deleted*
- 2.1 and 2.3 – *these can be combined and refined to indicate that the standard applies to the cumulative communications for a project, whether or not the communication is a statement of actuarial opinion; and that the requirements for written communication do not apply to the exceptions in 2.3 a, b or c.*

Principles of communication and disclosure

As described above, current actuarial practice is often a continuing, ongoing process, particularly for our area of practice, pensions. Also, the amount and detail of the communication will likely vary depending on its intended or likely use. We believe the standard should be organized around the following general principles:



Page 3

January 12, 2009

ASOP No. 41 Revision

Actuarial Standards Board

- Unless clearly and specifically outside the scope of engagement, statements of actuarial opinion should be communicated in writing (including supporting documentation for statements of actuarial opinion previously issued orally). *“In writing”* includes written materials transmitted by electronic as well as other more conventional means. In the limited case where written communication is outside the scope of the engagement, the actuary should prepare internal file documentation that includes all the appropriate elements described by the ASOP, and which could be made available to the principal on demand.
- Actuarial communications that are not statements of actuarial opinion follow the same guidance.
- In addition to the requirements of sections 4.1, 4.2 or 4.3 (as applicable), the cumulative communication should include a description of the data, assumptions, methods and procedures at a level of detail that is appropriate for the likely audience.
 - Less detail may be needed if the likely audience is the principal only, the actuarial opinion is an interim step in a larger project, and the actuary and principal have a working relationship that includes context and background.
 - More detail is needed if the likely audience extends beyond the principal to people who might not have the background and context of the decision.
 - When the likely audience is large or includes *Other Users*, or when the project is complete, the cumulative communication needs to include a description of the actuarial basis “with sufficient clarity that another actuary qualified in the same practice area could make an objective appraisal of the reasonableness of the actuary’s work as presented.” Many actuaries will find it convenient to cover this step by issuing a formal report; however, other modes of written communication that function as a report and meet all the requirements would also be acceptable.
 - The *likely audience* includes those persons (identified in section 3.5) beyond the intended audience whom the actuary judges are likely to be influenced by the actuarial communication.
 - *Appropriate* communications require the actuary’s judgment as to what the likely audience needs to know to be able to rely on the communication and to understand its limitations.
 - Example: for an interim discussion with the principal (“if you choose A, the consequence is Y; if you choose B, the consequence is Z”), it may be sufficient to

say “based on data as of 20xx.” For a broader audience, or a final documentation of the option elected and certification of the results, a full summary of the data, assumptions, methods and procedures would be appropriate.

Exposure draft sections affected:

- 1.2 – *change the last sentence of the first paragraph to read: “This standard does not apply to communications that may refer to actuarial services, but do not constitute advice, recommendations, findings, or opinions based upon actuarial considerations (for example, brochures, fee quotes, invoices or data requests).”*
 - 2 – *it may be helpful to add a definition of **data**, for example, “the relevant facts on which the actuarial services are based, including, without limitation, participant data, assets and plan provisions.”*
 - *Similarly, it may be helpful to add definitions for **methods** and **procedures**, or otherwise explain why sections 2.3, 3.1 and 3.6 refer to “methods and procedures” and sections 3.2.4, 4.2 and 4.3 refer to “methods” only.*
 - 3.1.3 – *reword to apply to statements of actuarial opinion, instead of significant findings*
 - 3.1.4 – *clarify that the standards in this section apply not just to actuarial reports, but to all final or broadly distributed communications*
 - 3.1.5 *can be deleted*
 - 3.5 *may need to be expanded to note that responsibility to other users should be taken into account in determining the content and format of the communication.*
- Other sections may need to be added to articulate the disclosure principles outlined above.*
- 3.6 – *replace “an actuarial report” with “a written communication” in the last sentence.*

Clarity of other disclosures

In general, we endorse the list of required disclosures in an actuarial communication, and note that the requirements should be applied on a cumulative basis to communications available to the likely audience. However, clarity of the ASOP would be improved by requiring the cumulative written communication to clearly and explicitly identify:

- Whether there is an actual or potential conflict of interest;
- Limitations of use for communications issued in a prescribed form;
- Which assumptions and methods were selected by the actuary;

Page 5

January 12, 2009

ASOP No. 41 Revision

Actuarial Standards Board

- Which assumptions and methods were not selected by the actuary, and those responsible for their selection;
- The actuary's opinion about the reasonability of the assumptions and methods, specifically:
 - That the assumptions and methods are reasonable for the purpose of the statement of opinion;
 - That some or all of the assumptions or methods were selected by others and have not been evaluated for reasonableness at the request of the principal; or
 - That the actuary believes some or all of the assumptions to be unreasonable and has quantified (and disclosed in the communication) the difference between the assumptions / methods used and what the actuary judges to be reasonable.

Exposure draft sections affected:

- 3.3 – *expand to encourage written support or follow-up for oral communications.*
- 3.2.2 – *delete “that is not apparent” from the first sentence; similarly delete “that is not readily apparent to the intended audience” from section 4.1.e*
- *In the flush language at the end of sections 4.2, 4.3.1 and 4.3.2, replace “requesting” with “and may direct” so that the sentence reads:
“If the actuarial communication is in a prescribed form that does not accommodate these disclosures, the actuary should make this disclosure in a separate communication (such as a cover letter) to the principal and may direct that both communications be disseminated together where practicable”*
- *Change 3.2.4 to require definite statements of reasonability, and not rely on intended audience “expectations.” Other disclosures as outlined above should also be included.*

Scope

The exposure draft mentions “another profession’s standards” only once, as the source of the form and content of a particular actuarial communication. Thereafter, it is not clear whether those standards fall under the term *legally binding authority* when referring to the selection and reasonableness of assumptions or methods. Another profession’s standards may also be the source of prescribed assumptions or methods; however, those standards are not “legally binding” on the actuary, nor does the party that selects the assumptions and/or methods have the “legal” authority to do so. Accordingly, the actuary can not certify compliance with those standards. The best that an actuary can do is fully and completely disclose the prescribed

Page 6
January 12, 2009
ASOP No. 41 Revision
Actuarial Standards Board

methods and assumptions and leave it to others (experts in the other profession) to ascertain whether the actuary's work complies with that profession's standard and is reasonable for that purpose.

We note that needing to consider another profession's standards is very common; in the pension practice, for example, a large proportion of our work relates to calculations that our clients need to comply with various accounting standards.

Exposure draft sections affected:

- 3.2.4, 4.2, and 4.3 should be modified or expanded to clarify disclosures needed when assumptions or methods are selected by another party pursuant to another profession's standards.

Organization

We do not find the split of disclosure requirements (and necessary cross-referencing) between sections 3.2 and 4 to be helpful. All the disclosure requirements should be clearly enunciated in one place.

Exposure draft sections affected:

- All of the material in section 3.2 (including modifications suggested above) should be moved to the appropriate places within section 4.

Specific questions asked by the Actuarial Standards Board

1. *Do you believe it is appropriate to require the actuary to be responsible for assumptions and methods used within an actuarial communication unless otherwise disclosed?*

As previously indicated, the standard should clearly state that the actuary should specifically accept or disclaim responsibility with respect to each method and assumption.

2. *This ASOP is titled "Actuarial Communications" even though it also addresses documentation. Does this create any confusion? If so what would a better title be?*

No. Documentation is also included in a number of other standards, and it would be more confusing to imply that this standard included all issues of documentation. ASOP 41 is correctly focused on communication – that is, the process of enabling the audience to understand the actuary's conclusions, the supporting reasons for those conclusions, and

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Page 7
January 12, 2009
ASOP No. 41 Revision
Actuarial Standards Board

the limitations of those conclusions.

3. *Does this draft make it sufficiently clear when the actuary should issue an actuarial report disclosing methods, procedures, assumptions, and data as opposed to issuing another form of actuarial communication that does not make these disclosures?*

No. As outlined above, the principles of disclosure should apply to the cumulative actuarial communications with respect to an actuarial assignment. We see no need for a special category of communication called an “actuarial report,” or for the extra analysis required to determine whether or not something is an “actuarial report” or whether or not it needs to be issued in the first place.

4. *Are the added disclosure requirements in cases involving deviation clear and appropriate?*

Yes.

Thank you for the opportunity to comment on the exposure draft. If you have any questions, please contact me or Steve Alpert (steve.alpert@mercer.com, 212 345 8566).

Sincerely,

A handwritten signature in black ink that reads 'Ethan E. Kra'.

Ethan E. Kra, FSA, EA
Worldwide Partner

The information contained in this document (including any attachments) is not intended by Mercer to be used, and it cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code that may be imposed on the taxpayer.



Page 8
January 12, 2009
ASOP No. 41 Revision
Actuarial Standards Board

Appendix

Examples of how ASOP 41 might be applied to actuarial engagements

Example 1

A consulting actuary is engaged to provide an annual actuarial valuation for funding purposes for a defined benefit pension plan for the plan year beginning January 1, 20x1. In general, the final calculations cannot be completed until the employer has made all the contributions due for the 20x0 plan year, which could be as late as September 15, 20x1.

However, the client is required to make quarterly contributions for the 20x1 plan year beginning on April 15, 20x1. The amount of contribution will vary based on a number of employer decisions and considerations, including the decision as to how much to contribute for the 20x0 plan year. The employer asks the actuary to describe the various employer contribution options and their consequences on the April 15 and July 15, 20x1 quarterly contributions.

The actuary would not typically issue a "report" describing those considerations, and would not include the various alternatives in the final certification of the 20x1 funding requirements because that communication is intended to reflect the results of the employer's cumulative decisions. Rather, the actuary would commonly meet with the employer (either in person or by phone) to walk the client through the choices. The meeting may or may not have a handout to facilitate discussion. It is quite likely that more than one meeting would take place as the client wrestles with the various decisions. Some of the "meetings" would be nothing more than a phone or email response to a specific client question on the topic. However, in each of the meetings, some type of "actuarial finding" is presented and the principal will be relying on those findings to inform a business decision (i.e., there is a high probability that the findings are "statements of actuarial opinion" as that term is defined in the qualification standards).

Example 1 – Application of ASOP 41 based on Mercer's recommendations

The interim communications are statements of actuarial opinion, because they are based on actuarial considerations, and it is intended that the principal be able to rely on the opinion to make business decisions.



Page 9
January 12, 2009
ASOP No. 41 Revision
Actuarial Standards Board

The interim communications are intended solely for the principal. The principal and the actuary have an ongoing working relationship, and from prior discussions, the actuary believes that the principal has a general awareness of the context and background. The actuary judges that under the circumstances, the likely audience will not extend beyond people who have direct contact with the principal and that the principal will fairly present any material the actuary prepares.

The interim communications ideally would be written – either because they originated as written materials, or as a follow-up e-mail or note documenting a verbal discussion. The cumulative written materials should include, at a level of detail appropriate to the limited audience in this case, a brief comment describing the actuarial basis (the data collection date, material differences in assumptions, methods, plan provisions or procedures from the 20x0 calculations, the change (if any) in the actuary’s assessment of reasonability since the 20x0 calculations). Subsequent communications could refer to previous communications and only note changes since then. Disclosures of the principal, responsible actuary, scope, intended purpose, and limitations on use would be brief or obvious from context.

The final certification of results, once all the decisions have been made, has a very wide likely audience beyond direct contact of the actuary or principal, and thus requires that the cumulative written communication available to the larger audience be comprehensive and thorough, provide full background and context, and include all elements of disclosure as required by ASOP 41 (“sufficient that another actuary ... could make an objective appraisal of the reasonableness.”) This communication will often be a formal report, although it could take other forms, such as a letter or management presentation. The totality of the cumulative communication available to the likely audience should meet these requirements, even if it consists of several elements which do not individually meet the standard.

Example 2

The actuary has been asked by the principal to attend a negotiation session (for example, collective bargaining or merger/acquisition). The actuary is asked to estimate the value of benefits based on the limited information available on the spot, and possibly based on assumptions prescribed by the principal. The principal has made it clear that he does not want anything in writing – once a decision is made at the meeting it is not going to be revisited.



Page 10
January 12, 2009
ASOP No. 41 Revision
Actuarial Standards Board

Example 2 – Application of ASOP 41 based on Mercer’s recommendations

The actuary’s oral communication is a statement of actuarial opinion. It may be in the actuary’s best interest to have written terms of engagement with the principal with appropriate language about the significant limitations of use of the actuary’s analysis in such situations. If actual or potential conflicts of interest become apparent to the actuary in the meeting, that fact should be verbally disclosed to all parties involved.

In context, the actuarial basis and identification of the parties, should be obvious or should be briefly summarized orally.

The principal specifically requested not to have a written communication, however, the actuary should nonetheless take care to organize and preserve the notes, workpapers, caveats and summary of results from the meeting so that they are available should the principal ask for them and for purposes of defending the actuary’s actions (unless the principal asks that they be destroyed.)

Example 3

To interest a client in a new type of analysis, the actuary gathers publicly available information specific to the client and makes broad estimates based on this information and general rules of thumb. Several slides with sample results based on these estimates are presented to client personnel to see if they would be interested in this type of analysis.

Example 3 – application of ASOP 41 based on Mercer’s recommendations

The slides are an actuarial communication, but not a statement of actuarial opinion. The actuary should identify the publicly available information that was used, and include a clear statement that the slides are illustrative only and should not be relied upon. Because the data is publicly available, the actuary should reference its source, but does not need to describe it in extensive detail. The estimates and rules of thumb should be briefly identified.