



**TOWERS
PERRIN**

COMMENT 5: DECEMBER 19, 2008

Friday, December 19, 2008

Actuarial Standards Board
Request for Comments
1100 Seventeenth Street, NW 7th Floor
Washington, DC 20036-4061

Dear Gentlemen:

ASB REQUEST FOR COMMENTS

We are writing on behalf of Towers Perrin in response to your October 13, 2008 Request for Comments on Actuarial Standard of Practice (ASOP) content and ASB procedures. Towers Perrin employs over 700 actuaries who are members of U.S. actuarial organizations.

Towers Perrin was founded in 1934 and is one of the world's largest human resources and risk and capital management consulting firms. We also are one of the world's largest employers of actuaries, most of whom are Fellows or Associates of the Society of Actuaries or Casualty Actuarial Society and Members of the American Academy of Actuaries.

Our responses below are consistent with comments we provided to the ASB in 2006 relating to these topics.

Questions 1 and 2 ask about the level of guidance and degree of specificity that should be included in ASOPs. Towers Perrin believes the actuarial standards of practice should provide guidance and baseline professional standards. Indeed, the notion that the standards should serve primarily as a source of *guidance* and should not be prescriptive is at the heart of the question whether the "ASOPs provide an appropriate level of *guidance*."

Often, standards appear to be limited intentionally to reflect generally accepted actuarial practice. However, there are situations where the interests of the intended users of the actuarial work product would best be served by departing from generally accepted practice. In our view, the ASOPs must be written in a manner that explicitly acknowledges an actuary's need to apply judgment based on the facts and circumstances of each particular situation. Indeed, we encourage the ASB to charge the committees that draft ASOPs to proceed with an explicit acknowledgment that actuaries are trained professionals who need to exercise judgment specific to the facts and

circumstances of each situation and to approach the drafting process with this key concept central to their work.

We are concerned that the ASOPs often are interpreted as requiring an actuary to follow specific practices, even where the particular facts and circumstances suggest a departure from a particular practice. In Towers Perrin's view, the ASOPs should make clear that any generally accepted practice serves as guidance to be considered by the actuary when exercising his or her judgment, and that no single practice is a "best method" or "safe harbor" for every situation.

We strongly oppose introducing the concept of "best practices" into the ASOPs. We believe "best practices" are those appropriate to the specific circumstance and needs of the intended user. Even assuming actuaries could reach agreement on the subject of "best practices," putting those into standards would inevitably lead to characterization of such practices as the minimum standard in litigation and client disputes. This would place actuaries at unnecessary and significant risk and, we believe, could significantly increase the cost of actuarial consulting services. While Towers Perrin supports the efforts of actuarial professional bodies to encourage the use of best practices, we do not believe that ASOPs are the appropriate means to achieve that objective.

Question 3 asks whether the ASOPs are clear and unambiguous. We think the answer depends upon the situation in which the question is posed. While the ASOPs may be sufficiently clear when used for their intended purposes – i.e., to assist trained actuaries in providing services to intended users -- they quickly can be rendered ambiguous and unclear in other settings.

Once divorced from the setting in which the actuary is providing services to an intended user, the ASOPs often are used as a weapon against actuaries. While Towers Perrin has had the good fortune not to be ensnared in a significant amount of litigation, our experience in that arena, particularly as it relates to the use of the ASOPs by other actuaries in the profession, has been disappointing to say the least. In our experience certain actuaries are readily prepared to take the position that the ASOPs are prescriptive and that any supposed divergence is *prima facie* negligence on the part of the actuary performing the services. Invariably, litigation relating to actuarial work results in two designated actuarial experts facing off on the meaning of a particular standard and the question whether a particular standard serves as guidance or is an iron-clad rule that does not allow for the exercise of any professional judgment.

This type of contest between opposing actuaries demonstrates clearly that the standards are not clear and unambiguous and further that the purpose of the standards remains undefined *by the profession*.

We suggest two ways to improve the clarity of the ASOPs. First, we think it is essential that the ASB involve experienced practitioners in the drafting process. Second, we believe the purposes and limitations of the standards should be more clearly articulated. In particular, it should be clear that standards should be applied reflecting the level of information available to the actuary at the time the work was done and that it is clearly inappropriate to judge application of the guidance set out in a standard using hindsight. Indeed, we recently have seen an actuary opine that another actuary's work should be evaluated against an ASOP that was issued several years *after* the work in question was performed.

Question 4 relates to the process of exposing drafts of the ASOPs. Towers Perrin is satisfied that exposure drafts are reasonably available to actuaries who wish to comment. We believe a 30-day comment period is too short and that a minimum of 60 days should be adopted.

Question 5 asks about ways to increase the number of comments received by the ASB. We note that in 2006 we suggested providing continuing education credit for actuaries who submit comments. Based on the new Qualification Standards for Statements of Actuarial Opinion, we believe the profession has put this suggestion into effect. Reading and commenting on exposure drafts is explicitly mentioned as receiving credit; we think this is an excellent development.

We continue to believe the ASB should be more proactive in soliciting comments on each exposure draft and suggest the following.

- The ASB should affirmatively solicit comments on each exposure draft from actuaries whom it considers to be recognized thought leaders in the area that is the subject of the standard.
- The ASB should solicit comments on each exposure draft from major employers of actuaries. We believe that they have a broad and valuable perspective on the practical implications of standards.
- The ASB should conduct sessions to educate actuaries about exposure drafts and solicit comments. These could include webcasts, sessions at professional meetings and sessions at local actuarial clubs. We would note that such sessions would likely qualify for Organized Activity and professionalism credit under the Qualification Standards, thus being very attractive to actuaries.

Question 6 inquires about responses by the ASB and drafting committees to comments submitted on exposure drafts. Towers Perrin appreciates the opportunity to comment on exposure drafts and we endorse the comment process. In our experience, however, comments are not infrequently met with either a response that expresses disagreement with the point of view expressed in the comment without providing the basis for the

disagreement or a non-substantive response. We believe that each substantive comment submitted should be reviewed carefully and met with a substantive response that articulates the basis for any disagreement with the comment advanced and an articulation of the logic or reasoning underlying the provision or language the committee has proposed. By providing substantive responses to comments, we believe the dialog between the drafting committee and the profession will lead to a superior standard setting process.

Question 7 relates to reliance on other actuaries, other experts, and data. Towers Perrin is generally satisfied that the ASOPs provide an appropriate level of guidance to actuaries who need to place reliance on work created by other professionals. We would like the ASOPs to make it clear that whether or not to rely on the work of others is based on the actuary's judgment given the specific facts and circumstances of the situation.

Question 8 asks the question whether ASOPs should address "concepts" of other disciplines. It is unclear to us what the term "concepts" is intended to address. To the extent it refers to techniques originally developed by other professions, such as certain asset modeling techniques, these can quickly become part of standard actuarial techniques. The ASB needs to consider how to address such transitions from "leading edge" to "generally accepted" practices. We are unaware of any ASOP that prevents an actuary from reflecting new concepts when performing work. Moreover, the ability to incorporate new practices would be enhanced if the ASOPs explicitly acknowledged that their application is subject to an actuary's professional judgment (as we suggested in our response to Questions 1 and 2).

To the extent "concepts" refers to the work these other professions do, we start with the proposition that each profession sets its own standards based on its unique knowledge and understanding of relevant principles. We also note that to the extent "concepts" of other professions bear on actuarial work, intended users ought to be relying on those other professions and not on actuaries. We note in this regard our concern with recent aggressive efforts by both the accounting profession and the insurers to shift their own responsibilities to perform due diligence and thereby comply with their own professional responsibilities and standards. In our view, the actuarial profession should resist such attempts and should make certain that the standards of our profession do not allow other professions to shift responsibility inappropriately to actuaries.

Question 9 asks about the role of ASOPs in mitigating litigation risk. Towers Perrin has not found the standards to be beneficial in litigation. Primarily, this is because in our experience there are actuaries who are willing to serve as expert witnesses and adopt a strained or overreaching interpretation of a standard that would not reasonably have been in the contemplation of the actuary or the intended user; apply a standard using hindsight to challenge the judgments made; apply a standard that was not in existence

at the time the work was performed; and argue failure to comply with a standard that did not apply to the work. This said, Towers Perrin believes having well written standards is better than having no standards.

Question 10 asks for any other suggestions concerning the ASB's operations or procedures. We have two suggestions.

First, we strongly believe members of both the ASB and its operating committees should primarily be practicing actuaries and should include adequate representation by actuaries who work for or recently retired from the largest employers of actuaries, including both consulting firms and insurance companies. The experiences these actuaries have with complex clients and issues will be of significant benefit in drafting standards.

Second, Towers Perrin believes that ASOPs should not be written or interpreted in a manner that allows readers to presume that actuaries serve the "general public." Actuaries employed by Towers Perrin serve the firm's clients. While members of the public who are not our clients may benefit from our work, we nevertheless perform and deliver the work only for our client and no other person or entity may rely on our work. We strongly believe any ASOP that explicitly provides for or allows a presumption that actuaries perform work for the general public will have only one result – exposing actuaries to unwarranted and unmanageable risk.

In our view, it is imperative that ASB members and drafting committees acknowledge as a threshold matter that actuarial work subject to the ASOPs is performed only for intended users and not for the benefit of the "general public." This said, we believe members of the ASB and standard drafting committees should accept and weigh appropriately input from sources and centers of influence that are relevant to the standard setting process. Appropriate weight should always have as a counterbalance the interest and protection of actuaries and the exercise of their professional judgment.

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Towers Perrin appreciates the opportunity to provide comments. We would be pleased to discuss our comments with you in more detail. Please do not hesitate to contact me.



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