



ACTUARIAL STANDARDS BOARD

**Actuarial Standard
of Practice
No. 34**

**Actuarial Practice Concerning
Retirement Plan Benefits in Domestic Relations Actions**

**Developed by the
Pension Committee of the
Actuarial Standards Board**

**Adopted by the
Actuarial Standards Board
September 1999
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September 1999

TO: Members of Actuarial Organizations Governed by the Standards of Practice of the Actuarial Standards Board and Other Persons Interested in Actuarial Practice Concerning Retirement Plan Benefits in Domestic Relations Actions

FROM: Actuarial Standards Board (ASB)

SUBJ: Actuarial Standard of Practice (ASOP) No. 34

This booklet contains the final version of ASOP No. 34, *Actuarial Practice Concerning Retirement Plan Benefits in Domestic Relations Actions*.

Background

This standard has been prepared by the Pension Committee of the Actuarial Standards Board at the request of the Actuarial Board for Counseling and Discipline (ABCD). The ABCD requested that an actuarial standard of practice be developed because a number of cases involving this type of practice had been referred to the ABCD.

Key Changes to First Exposure Draft

The first draft of a proposed standard was exposed for review in a document dated January 1998, with a comment deadline of June 1, 1998. Twenty-seven comment letters were received. The significant issues and questions contained in these letters, as well as the Pension Committee's responses to such, are summarized in appendix 3 of the second exposure draft.

The first exposure draft described two types of allocation methods—direct tracing and fractional rule—and two approaches to allocating age- or service-dependent benefits—immediate termination and continued employment. The draft solicited comments as to whether there were additional methods or approaches that should be addressed by the standard, or whether the standard of practice should prescribe the use of only one method or approach. The comment letters did not describe any additional allocation methods or approaches to allocating age- or service-dependent benefits. Some commentators felt that the standard should prescribe one allocation method or approach, but overall there was no uniformity as to which method or approach should be prescribed. Therefore, the second exposure draft, like the first, described two basic allocation methods (acknowledging that there are numerous variations of these two methods) and two approaches to allocating age- or service-dependent benefits.

The first exposure draft also asked for comment on the guidelines for selecting the discount rate, mortality assumption, disability assumption, and assumptions regarding growth of individual

account balances. The second exposure draft provided different guidance for selecting these assumptions in response to the comments received.

Some commentators felt that the required communications and disclosures were excessive and would increase the cost of providing actuarial services in domestic relations actions. However, because the standard provides broad leeway with respect to allocation methods and assumptions, the Pension Committee believes extensive disclosures are necessary to document an actuarial valuation sufficiently to permit another actuary to make an objective appraisal of its reasonableness and validity. The communications and disclosure requirements were essentially unchanged from the first exposure draft to the second.

Second Exposure Draft

The second exposure draft of this actuarial standard of practice was issued in October 1998 with a comment deadline of April 1, 1999. The Pension Committee carefully considered the thirteen comment letters received. The key changes made to the final standard in response to these comment letters are as follows:

1. Section 3.4.4, Providing Expert Testimony, was revised to remove the requirement that the actuary state that a valuation prepared using dates, methods, or assumptions prescribed by applicable law does not necessarily reflect the actuary's own expert opinion, and to soften the wording generally.
2. The requirement to identify the legal jurisdiction assumed to govern the domestic relations action was removed from section 4.3, General Disclosures, and added to section 4.4, Actuarial Valuation Results.

In addition, a number of clarifying changes were made to the text. Please see appendix 3 for a detailed discussion of the comments received and the Pension Committee's response.

The Pension Committee thanks everyone who took the time to contribute comments and suggestions on the first and second exposure drafts.

The Pension Committee would like to thank all who have made significant contributions to this and earlier drafts of this standard of practice, including Arthur W. Anderson, C. Stephen Parker Jr., Franklin E. Peters, and Kenneth A. Steiner.

Pension Committee of the ASB

Richard Joss, Chairperson

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ACTUARIAL STANDARD OF PRACTICE No. 34

**ACTUARIAL PRACTICE CONCERNING
RETIREMENT PLAN BENEFITS IN
DOMESTIC RELATIONS ACTIONS**

STANDARD OF PRACTICE

Section 1. Purpose, Scope, Cross References, and Effective Date

- 1.1 Purpose—This standard does the following:
- a. provides guidance to actuaries who perform professional services concerning retirement plan benefits in domestic relations actions;
 - b. amplifies those provisions of Actuarial Standard of Practice (ASOP) No. 17, *Expert Testimony by Actuaries*, and ASOP No. 4, *Measuring Pension Obligations*, that relate to actuarial practice concerning retirement plan benefits in domestic relations actions; and
 - c. provides information to enhance understanding of the actuary’s role and responsibilities, and of the factors that may affect the measurement, allocation, or division of retirement plan benefits in domestic relations actions.
- 1.2 Scope—This standard applies to actuarial services performed in connection with the measurement, allocation, or division of retirement plan benefits in domestic relations actions. This standard is not applicable to actuarial services performed in connection with other post-employment benefits, such as medical benefits, that may also be considered as part of the domestic relations action.
- To the extent that the guidance in this standard may conflict with ASOPs of a more general nature, this standard will govern.
- If the actuary departs from the guidance set forth in this standard in order to comply with applicable law (statutes, regulations, and other legally binding authority), or for any other reason the actuary deems appropriate, the actuary should refer to section 4.
- 1.3 Cross References—When this standard refers to the provisions of other documents, the reference includes the referenced documents as they may be amended or restated in the future, and any successor to them, by whatever name called. If any amended or restated

document differs materially from the originally referenced document, the actuary should consider the guidance in this standard to the extent it is applicable and appropriate.

- 1.4 Effective Date—This standard will be effective for relevant assignments for which the actuary is first engaged on or after March 31, 2000.

Section 2. Definitions

The definitions below are defined for use in this actuarial standard of practice.

- 2.1 Actuarial Valuation—The determination, as of a measurement date, of the actuarial present value of a retirement plan benefit and any related benefits.
- 2.2 Age- or Service-Dependent Benefits—Benefits for which the amount or timing of benefit payments depends on the covered party's age or length of service.
- 2.3 Allocation Date—The date through which the benefits earned during the marriage are determined. Generally, this is the last day of the allocation period.
- 2.4 Allocation Method—A method used to determine the portion of retirement plan benefits that is included in marital property.
- 2.5 Allocation of Retirement Plan Benefits—The allocation of retirement plan benefits into two or more portions: a portion that is fully considered to be marital property and a portion that is not marital property, and perhaps a portion that is determined to be partially marital property.
- 2.6 Allocation Period—The period over which the benefits earned during the marriage are determined. This is typically the period from the date of marriage (or, if later, the hire date or plan entry date) to the date of marital separation.
- 2.7 Applicable Law—Federal, state, and local statutes, regulations, case law, and other binding authority that may govern the domestic relations action, the retirement plan or plans, or any other aspect of the actuary's engagement.
- 2.8 Covered Party—The party in a domestic relations action who is covered by the retirement plan.
- 2.9 Direct User—A present or prospective client or employer who has the opportunity to select the actuary and is able to communicate directly with the actuary about the actuary's qualifications, work, or recommendations.
- 2.10 Domestic Relations Action—Prenuptial, postnuptial, separation, divorce, and support agreements, and other domestic relations proceedings.

- 2.11 Domestic Relations Order (DRO)—A court order dividing retirement plan benefits between the covered party and spouse.
- 2.12 Judge—The judicial officer presiding over a domestic relations action, or an arbitrator, mediator, or special master acting in a similar adjudicatory capacity.
- 2.13 Marital Property—Assets of the marital estate as determined under the laws and regulations of the applicable jurisdiction.
- 2.14 Measurement Date—The date as of which the actuarial present value is determined. The measurement date may be different from the allocation date.
- 2.15 Qualified Domestic Relations Order (QDRO)—A domestic relations order that satisfies the qualification requirements of Internal Revenue Code (IRC) section 414(p) and section 206(d) of the Employee Retirement Income Security Act of 1974 (ERISA).
- 2.16 Retirement Plan—An employment-related arrangement for determining the amount and timing of retirement plan benefit payments, eligibility for benefits, etc. A retirement plan may be a defined benefit pension plan, a defined contribution plan, or a hybrid plan with both defined benefit and defined contribution elements. It may be a plan qualified under the IRC, a nonqualified plan of deferred compensation, or a governmental plan sponsored by the United States or its agencies or a state or local government.
- 2.17 Spouse—A party to the domestic relations action who is not the covered party. Normally, the term refers to the current spouse or former spouse of the covered party, but may on occasion refer to a child (or children) or other party to the domestic relations action.

Section 3. Analysis of Issues and Recommended Practices

- 3.1 Overview—Section 3 provides specific guidance for actuaries who undertake one or more of the following tasks in connection with a domestic relations action: performing an actuarial valuation and preparing the related report (section 3.3); participating in adversarial proceedings (section 3.4); providing information on the division of retirement plan benefits (section 3.5); assisting in drafting a court order (section 3.6); and reviewing or implementing a court order (section 3.7).
- 3.2 Initial Considerations—When undertaking an assignment concerning retirement plan benefits in a domestic relations action, the actuary should do the following:
- 3.2.1 Identify the Client—One or more of the following parties may select the actuary and shall be deemed to be the actuary’s client for purposes of this standard:
- a. the covered party or his or her attorney;

- b. the spouse, other interested party, or his or her attorney;
- c. the judge presiding over the domestic relations action;
- d. the court overseeing the domestic relations action; or
- e. a retirement plan sponsor, administrator, or trustee.

3.2.2 Disclose Any Conflicts of Interest—The actuary should be alert to the possibility of a conflict of interest and should disclose any actual or potential conflict of interest to all known direct users. A conflict of interest exists whenever the actuary’s objectivity, or duty owed to a client or employer, is impaired by competing interests. A potential conflict of interest exists whenever it reasonably appears that the actuary’s objectivity, or duty owed to a client or employer, may be impaired by competing interests. For example, a potential conflict of interest exists when the retirement plan’s enrolled actuary is retained on behalf of the covered party, spouse, judge, or court. Similarly, a potential conflict of interest exists when the actuary has previously performed professional services for or has a personal relationship with the opposing attorney or any other party to the domestic relations action. In these matters, the actuary should be guided by the Code of Professional Conduct, Precept 8, Conflict of Interest.

3.2.3 Determine the Nature and Scope of the Engagement—The actuary should make certain that he or she has a clear understanding of the scope of the actuary’s engagement, and that the scope of the engagement is clearly communicated to the client. For example, if the plan has retained the actuary to calculate the covered party’s benefit amounts at various dates—as distinguished from being retained on behalf of the covered party or spouse to value the benefit—then the actuary’s communication and underlying work product should so indicate. Typically, the engagement may include one or more of the following:

- a. calculating the covered party’s accrued or projected benefit at various dates;
- b. selecting an allocation method;
- c. selecting actuarial assumptions;
- d. performing an actuarial valuation of retirement plan benefits;
- e. participating in adversarial proceedings, including reviewing the work of another expert in the domestic relations action, participating in negotiations with another expert, assisting with the attorney’s case

preparation, and providing expert testimony as to the actuary's opinion of the value or appropriate allocation of retirement plan benefits;

- f. providing information on the division of retirement plan benefits;
- g. assisting in drafting a court order that will accomplish a division of retirement plan benefits, including providing sample documents; or
- h. assisting the plan sponsor or administrator in reviewing or implementing a court order, including interpreting the provisions of the order or expressing an opinion as to whether a DRO is a QDRO (or satisfies other applicable requirements).

3.2.4 Avoid the Unauthorized Practice of Law—The actuary should be familiar with the rules regulating the practice of law in the jurisdiction where the actuary will be rendering the services and should avoid the unauthorized practice of law. For example, normally it would be inappropriate for the actuary to advise a non-attorney whether a draft court order meets applicable procedural requirements to be a valid order in the jurisdiction. It would, however, be appropriate for the actuary to advise whether the order is consistent with the terms of the retirement plan and whether each party's benefit is definitely determinable from the order.

3.2.5 Be Familiar with Applicable Law—The actuary should have a general familiarity with applicable law that affects the actuary's work product or opinion. If a conflict exists between this standard and applicable law, compliance with applicable law is not considered to be a deviation from this standard.

3.3 Actuarial Valuation—An actuarial valuation is required to determine the value of benefits payable from a defined benefit pension plan that may be included in marital property. Defined contribution plans have individual account balances and usually do not require an actuarial valuation. However, an actuarial valuation may be required for a defined contribution plan if the time or form of benefit payment is restricted or the benefits are not yet fully vested. The goal of performing an actuarial valuation is to provide a reasonable and objective assessment of the value of retirement plan benefits that are marital property. While an actuarial valuation may be used in drafting a DRO, this section does not apply to reviewing or implementing a DRO (see section 3.7).

To prepare an actuarial valuation, the actuary should do the following: identify and collect the information required to determine the covered party's retirement plan benefits; select an allocation method, unless prescribed; select nonprescribed actuarial assumptions; and perform the computations. Each of these steps is described in more detail below.

3.3.1 Information Requirements—The actuary is responsible for identifying and collecting the information necessary for the actuarial valuation. Such information will typically include the following:

- a. the identity of the retirement plan(s) relevant to the engagement and each plan’s circumstances—such as ongoing, frozen, or terminated; qualified, nonqualified, or governmental;
- b. relevant retirement plan provisions—including benefit formulas, eligibility for participation and for benefit entitlement, ancillary benefits, early retirement subsidies, and optional forms of payment;
- c. covered party and spouse information—such as employment and plan participation status (active, terminated, vested, disabled, retired); compensation history; dates of birth, hire, plan participation, marriage, separation, or other relevant dates; accrued retirement plan benefits; prior domestic relations orders; and any special circumstances that might materially affect the valuation results; and
- d. measurement date—when the measurement date is selected by the actuary, such date should be reasonable, and the actuary should be prepared to justify the date selected.

The actuary may rely on information supplied by the attorney, plan sponsor, plan administrator, covered party, spouse, or plan record keeper, but the actuary is responsible for reviewing, when practicable, the reasonableness of the applicable data. The actuary should disclose the data used, the source of the data, and any data deficiencies that might materially affect the results.

3.3.2 Selecting an Allocation Method—When the actuary is responsible for selecting an allocation method, the allocation method should be reasonable, and the actuary should be prepared to justify the selection. The acceptability of a given allocation method may depend on the legal jurisdiction applicable to the parties involved in the action. The following provides the actuary additional guidance regarding the selection of an allocation method.

- a. Direct Tracing and Fractional Rule Methods—Where not restricted by applicable law, either of the following two types of methods may be used:
 1. Direct Tracing—The portion of the retirement benefit that is marital property is equal to the actual benefit accrued during the allocation period. For example, in applying direct tracing to a defined benefit pension plan, the portion of the retirement benefit included in marital property would generally be the increase from

the accrued (or vested) benefit, if any, at the marriage date to the accrued (or vested) benefit at the allocation date.

2. Fractional Rule—The retirement benefit is allocated by multiplying the retirement benefit by a fraction. The numerator and denominator of the fraction may be based on compensation, contributions, benefit accrual service, plan participation, employment, or other relevant data that are used directly in the determination of the accrued benefit. The numerator is equal to the selected measure accrued during the allocation period. The denominator is equal to the selected measure accrued during the total period in which the benefit is earned. When the selected measure is an elapsed time period, this method is commonly referred to as the *time rule*.

Illustrations of the calculations involved in the above two methods are included in appendix 2. Variations of these basic methods exist. The actuary should provide a complete description of the method(s) utilized.

- b. Age- or Service-Dependent Benefits—If the covered party has not satisfied the applicable age or service conditions for certain benefits provided in the plan but remains employed by the plan sponsor at the allocation date, the actuary should determine how to allocate the age- or service-dependent benefit. Unless otherwise required by applicable law, acceptable approaches include the immediate termination approach, which values the benefit as if the covered party terminated on the allocation date; and the continued employment approach, which reflects continued covered employment in accordance with selected retirement, turnover, mortality, or disability assumptions.
- c. Different Results from Different Methods—Different types of allocation methods can produce significantly different results. An actuary working in situations where different methods are used should educate his or her client as to the differences between the methods and the general financial impact of those differences.

- 3.3.3 Actuarial Assumptions—When selecting assumptions for an actuarial valuation of retirement plan benefits in a domestic relations action, the actuary should consider limitations imposed by applicable law and the facts and circumstances of the valuation, including each relevant retirement plan’s circumstances and provisions; information about the covered party and spouse (see section 3.3.1); and past experience and future expectations for the group of which the covered party is a member.

Each assumption selected by the actuary should be individually reasonable and consistent with every other assumption selected by the actuary. The actuary should be prepared to justify each assumption selected.

The following sections (a–j) describe assumptions commonly used in valuing retirement plan benefits and factors that the actuary should consider in selecting assumptions for valuing such benefits in domestic relations actions. This list is not intended to be all-inclusive; additional assumptions may be required depending on the provisions of the retirement plan being valued, specific circumstances of the covered party or spouse, and unique requirements of the jurisdiction.

- a. **Discount Rate**—Unless another assumption is clearly warranted by the facts and circumstances, the discount rate selected for valuing retirement plan benefits in domestic relations actions should be a low-risk rate of investment return, determined as of the measurement date and based on the cash-flow pattern of benefits being valued (for example, the current or a recent average yield to maturity on U.S. Treasury bonds of comparable duration, or a published index reflecting yield rates for high-quality corporate bonds).
- b. **Mortality Assumption**—A mortality table that is generally accepted for valuing annuities or pension benefits, or a table that reflects the expected mortality experience of plan participants, is generally appropriate. However, in some cases it may be appropriate to adjust the mortality assumption to reflect the health of the covered party or spouse.
- c. **Annuity Purchase**—As an alternative to selecting a discount rate under section (a), and a mortality assumption under section (b), the actuary may assume the cost of the purchase of an immediate or deferred annuity contract, as appropriate, from an insurance carrier. Typically, this may be done by using an actual insurance survey or by reference to published tables that are derived from such surveys.
- d. **Retirement Assumption**—The retirement assumption may be a single assumed retirement age or a table of retirement rates by age. The retirement assumption should reflect the applicable facts and circumstances, such as the following:
 1. the plan’s normal retirement age;
 2. the ages at which the covered party is first eligible to retire, to receive subsidized early retirement plan benefits, to receive unreduced retirement plan benefits, to receive Social Security benefits, and to receive Medicare benefits;

3. plan participants' average retirement age and retirement rates by age (if known to the actuary), or norms as to retirement age in the covered party's industry or profession;
4. the availability of medical and other post-retirement plan benefits;
5. the level of total retirement plan benefits; or
6. the covered party's income level, job position, and family circumstances.

Statements made by the covered party or spouse as to anticipated retirement age may also be considered, but should not be given undue weight because such statements may be self-serving and the domestic relations action itself may alter retirement planning decisions.

- e. **Cost-of-Living Adjustments**—If the retirement plan automatically adjusts benefits for increases in the cost of living, the actuarial valuation should generally reflect expected future increases in benefits attributable to such cost-of-living adjustments. In some cases, it may be appropriate to make an assumption about future ad hoc cost-of-living adjustments.
- f. **Disability Assumption**—A disability assumption may be required if the plan provides special benefits upon disability and if including a disability assumption would materially affect the valuation results. A disability table that is generally accepted for use in valuing annuities or pension benefits, or a table that reflects the expected disability experience of plan participants, is generally appropriate. However, in some cases it may be appropriate to adjust the disability assumption to reflect the health of the covered party.
- g. **Turnover Assumption**—An assumption as to the rate of participant termination may be required if the benefit is not yet vested or the benefit amount depends on future service. However, some jurisdictions permit only involuntary termination to be reflected when valuing retirement plan benefits in domestic relations actions. The turnover assumption should reflect the specific facts and circumstances, such as the following:
 1. the actual or expected turnover experience of plan participants (if known to the actuary);
 2. the covered party's age and service;
 3. the covered party's job position; and

4. plan provisions such as the age and service required to receive subsidized early retirement plan benefits.
- h. Compensation Scale—While it is common for the actuarial valuation of retirement plan benefits in domestic relations actions to reflect compensation through the allocation date only, some methods, and some jurisdictions, require the actuary to consider future levels of compensation. For example, a compensation scale may be appropriate when the retirement plan automatically adjusts accrued retirement plan benefits based on compensation increases for the covered party's last position, title, or pay grade, regardless of whether the covered party remains employed.
- i. Growth of Individual Account Balances—Some retirement plan benefits have components directly related to the accumulation of real or hypothetical individual account balances (including defined contribution plans, floor-offset arrangements, and cash balance pension plans). An assumption regarding the future investment return earned by the actual or hypothetical accounts may be required to value benefits under such plans. Unless another assumption is clearly warranted, this assumed rate of investment return should generally equal the discount rate.
- j. Variable Conversion Factors—Valuing certain retirement plan benefits may require converting from one payment form to another, such as converting a projected individual account to an annuity or converting an annuity to a lump sum. If the conversion basis is variable (for example, recalculated each year based on a stated mortality table and an interest rate equal to the yield on 30-year Treasury bonds), an assumption regarding future conversion rates may be required.

3.3.4 Valuation Process—An actuarial valuation should generally involve the following steps:

- a. identify the measurement date, the allocation date, the allocation period, potential retirement plan benefits, the contingencies that may affect payment of those benefits, and any special requirements of the applicable legal jurisdiction;
- b. project the timing and amounts of potential benefit payments, applying the selected or prescribed allocation method and applicable economic assumptions, and assuming that any required contingencies are met;
- c. calculate expected payments by multiplying each potential benefit payment determined in section (b) by the probability that the required contingencies are met, and applying the selected or prescribed demographic and other assumptions; and

- d. discount the expected payments determined in section (c) back to the measurement date, using the selected or prescribed discount rate.

3.3.5 Computing After-Tax Values—In some cases, the actuary may be asked for an opinion of the “after-tax” actuarial present value of retirement plan benefits. If the actuary has sufficient training or experience, the actuary may prepare such calculations even though the actuary may not be a credentialed tax practitioner. Responding to such requests will generally involve making a number of additional assumptions, such as the potential rate of taxation of retirement plan benefit payments and the tax rate applicable to investment returns. The actuary should disclose such assumptions and be prepared to justify each assumption.

3.3.6 Prescribed Dates, Methods, and Assumptions—Applicable law may specify or restrict the measurement date, the allocation date, the allocation method, some or all of the actuarial assumptions, or the process the actuary should use to select the measurement date, allocation date, allocation method, or actuarial assumptions. In other situations, the parties to the domestic relations action may stipulate or request the use of alternative measurement dates, allocation dates, allocation methods, some or all assumptions, or the selection process. In such jurisdictions or situations, the actuary should use the prescribed measurement date, allocation date, allocation method, actuarial assumptions, or selection process. Each nonprescribed date, method, and assumption selected by the actuary should be reasonable and consistent with every other nonprescribed assumption selected by the actuary, and the actuary should be prepared to justify each selection. When the actuary uses a prescribed measurement date, allocation date, allocation method, actuarial assumptions, or selection process, the actuary should disclose the prescribed items and the source. The actuary may also choose to present results using the actuary’s own best-estimate dates, methods, and assumptions in addition to providing the results using the prescribed dates, methods, and assumptions.

3.3.7 Consistency with the Actuary’s Previous Actuarial Valuations—The actuarial valuation should be objective and reasonable. Unless the dates, methods, or assumptions are prescribed, or the facts and circumstances dictate otherwise, the actuary should generally use the same process to select dates, methods, or assumptions for all actuarial valuations in the same jurisdiction. The actuary should not select different dates, methods, or assumptions than the actuary would ordinarily use solely to accommodate the litigation position of the actuary’s client. If the actuary uses a different selection process, the actuary should be prepared to explain the change from the actuary’s previous selection process in the same jurisdiction.

3.4 Participating in Adversarial Proceedings—When participating in adversarial proceedings, the actuary’s responsibilities may include the following:

3.4.1 Reviewing the Work of Another Expert—The actuary participating in adversarial actions may be asked to review the work of another expert. The actuary should conduct this review objectively, in terms of the reasonableness of the other expert’s opinion, rather than solely in terms of whether it agrees or disagrees with the actuary’s own opinion. In reviewing another expert’s work, the actuary should generally follow the steps below:

- a. review the basic facts of the situation used by the other expert (see section 3.3.1);
- b. review the allocation date, allocation method, and actuarial assumptions used;
- c. determine whether any material computational errors have occurred;
- d. summarize the findings with respect to sections (a), (b), and (c) that would have a significant impact on the valuation results; and
- e. report these findings to the client, including the actuary’s assessment of the reasonableness of the other expert’s opinion.

The actuary should be aware that the parties may use these findings to form an opinion on whether to litigate or settle the issue of retirement values, and should therefore strive neither to minimize legitimate differences of opinion nor to magnify immaterial differences.

3.4.2 Submitting Work for Review by Another Expert—The actuary participating in adversarial actions may be asked to submit work for review by another expert. The actuary should not submit work for review without the express consent of the client or the client’s authorized representative. The actuary should request guidance from the client as to the scope of material that may be disclosed. To the extent authorized, the actuary should be prepared to disclose the type of information described in section 3.4.1. Any authorized contact should be conducted in accordance with the Code of Professional Conduct, Precept 11, Courtesy and Cooperation.

3.4.3 Participating in Negotiations with Another Expert—The actuary may be asked to participate in negotiations with another expert to identify any differences (see section 3.4.1), and, possibly, to settle on a compromise value to which the parties can stipulate, thus avoiding litigation costs. The actuary should request guidance from the client as to the scope of the actuary’s negotiating authority and the scope of material that may be disclosed. The client has the ultimate responsibility for any agreed-upon positions. The result of such negotiation with another expert

might be a suggested stipulation or a list of irreconcilable positions that must be resolved.

3.4.4 Providing Expert Testimony—The actuary participating in adversarial proceedings may be asked to provide expert testimony. The actuary undertaking such an engagement should be familiar with, and comply with, all relevant actuarial standards of practice and general standards for the conduct of professional practice. Before providing expert testimony, the actuary should review data, materials, and documents that are relevant to the subject on which the actuary is expected to testify.

When testifying as to the differences between the actuary’s opinion and another expert’s opinion, the actuary should do so factually. For example, such testimony may take the following forms:

- a. showing that data currently available call into question a key assumption, method, or conclusion of the other expert;
- b. showing that the two conclusions do not conflict as much as they appear to, or that the difference is not material;
- c. showing what kinds of data may become available in the future to support one or the other set of assumptions or conclusions; or
- d. showing the effects of different dates, methods, or assumptions.

3.5 Providing Guidance on the Division of Retirement Plan Benefits—The actuary may be retained by an attorney or the court to provide guidance on alternative methods available for the division of retirement plan benefits between the covered party and spouse. In this situation, the actuary should be generally knowledgeable about (1) methods for the division of retirement plan benefits that are available in the jurisdiction; and (2) the types of court orders available for the division of retirement plan benefits under each retirement plan considered in the domestic relations action, and the differences between these various types of court orders (see appendix 1 for a discussion of the types of court orders available).

3.6 Assisting in Drafting a Court Order—When retirement plan benefits are to be directly divided or assigned by court order, the actuary may be retained to assist in drafting a court order that will accomplish the desired division of retirement plan benefits. Such assistance may include providing sample documents and calculating benefits payable under different payment schemes.

The actuary assisting in drafting a court order should take into account early retirement subsidies and ancillary benefits available under the retirement plan as appropriate. The actuary should suggest that the proposed language unambiguously define the benefit

amount payable to each party and that relevant contingent events, such as the covered party's death before retirement or the covered party's retirement after becoming eligible for subsidized early retirement plan benefits, be appropriately considered.

3.7 Assisting in Reviewing or Implementing a Court Order—When retirement plan benefits are to be directly divided or assigned by court order, the actuary may be retained by the plan sponsor or administrator to assist in reviewing or implementing the court order, as described below. Services provided by the actuary may include interpreting the provisions of the order or expressing an opinion as to whether a DRO is a QDRO or satisfies such other requirements as may apply to the specific type of court order and retirement plan (see section 3.5).

3.7.1 Reviewing a Court Order—To be a QDRO, a domestic relations order must satisfy the qualification requirements of IRC section 414(p) and ERISA section 206(d). The actuary may offer an opinion as to whether a particular order meets the qualification requirements. However, the actuary should bear in mind that one of the requirements is that the division of retirement plan benefits must be pursuant to a judgment, decree, or order under the domestic relations law of a state. If the order being reviewed fails to meet the procedural requirements of the court, it may not be a valid court order. The question of whether the proposed order meets the state's procedural requirements is a legal one and is beyond the qualifications of actuaries who are not also attorneys.

The actuary's opinion as to whether a DRO is a QDRO or satisfies such other requirements as may apply to the specific type of court order and retirement plan should clearly state the scope of such opinion. For example, if the opinion is limited to an examination of the technical content of the order and does not extend to the legal form of the order, the opinion should so state. If the actuary's opinion is intended to cover both the technical content and the legal form of the order, the actuary should beware of possible unauthorized practice of law (see section 3.2.4).

3.7.2 Assisting in Implementing a DRO—The plan sponsor or administrator responsible for implementing a DRO may retain the actuary to determine the benefit amount payable to the spouse or covered party in the various forms of payment available under the provisions of the plan, the DRO, and other governing document(s). This may include determining the amount of actuarially equivalent optional forms of payment in accordance with the plan provisions (including the plan's definition of actuarial equivalence) and any relevant applicable law. If the terms of the DRO or retirement plan are ambiguous, if the plan is silent, or if the DRO and plan conflict, the actuary may offer an opinion as to the appropriate interpretations or resolutions. However, the plan administrator or other authorized plan representative must make the final determination of the benefit amount that will be paid.

Section 4. Communications and Disclosures

- 4.1 Audience—In reporting the results of the actuary’s work, the actuary should consider the background of the likely audience and should explain technical terms and concepts so that they can be understood by the likely audience. For example, a report made to an attorney experienced in the measurement, allocation, and division of retirement plan benefits in domestic relations actions might presuppose more actuarial knowledge than a report that is to be made part of the court record.
- 4.2 Conflict of Interest—The actuary should make full disclosure of any actual or potential conflict of interest to all known direct users. Such disclosure should generally occur before the actuary accepts the engagement or as soon as practicable after the date the actuary learns of the actual or potential conflict of interest, if later.
- 4.3 General Disclosures—Any communication of actuarial findings, conclusions, or recommendations concerning retirement plan benefits in domestic relations actions should include at least the following:
- a. the name of the actuary responsible for the communication;
 - b. the identity of the client who has retained the actuary to provide services in connection with the domestic relations action and the identities of the parties to the domestic relations action;
 - c. a description of the actuary’s role and the nature and scope of the actuary’s engagement, including the scope of any statement of actuarial opinion;
 - d. the name of the retirement plan, description of the retirement plan’s circumstances, and a summary of key provisions or other relevant plan information affecting the measurement, allocation, or division of the retirement plan benefit;
 - e. covered party and spouse information that the actuary used when performing the services;
 - f. the source of any information supplied by others and the extent of the actuary’s reliance on that information;
 - g. data deficiencies that might materially affect the results, opinion, or advice being communicated;
 - h. a statement of the findings, conclusions, or recommendations necessary to satisfy the purpose of the communication and a summary of the actuarial determinations upon which these are based;

- i. any facts that, if not disclosed, might reasonably be expected to lead to a materially incomplete understanding of the communication;
- j. the disclosure in ASOP No. 41, section 4.2, if any material assumption or method was prescribed by applicable law (statutes, regulations, and other legally binding authority);
- k. the disclosure in ASOP No. 41, section 4.3, if the actuary states reliance on other sources and thereby disclaims responsibility for any material assumption or method selected by a party other than the actuary; and
- l. the disclosure in ASOP No. 41, section 4.4, if, in the actuary's professional judgment, the actuary has otherwise deviated materially from the guidance of this ASOP.

4.4 Actuarial Valuation Results—The actuary's communication of the results of an actuarial valuation of retirement plan benefits, as described in section 3.3, should include sufficient detail to allow another actuary to make an objective appraisal of the reasonableness and validity of the actuarial valuation. In addition to the items described in section 4.3, the actuary's communication of actuarial valuation results should include at least the following information:

- a. the identity of the legal jurisdiction assumed to govern the domestic relations action, if applicable;
- b. the measurement date;
- c. a description of the allocation method, including the allocation date and allocation period; a description of the benefit being allocated (for example, the vested accrued benefit, the accrued benefit, the employer-provided benefit, or projected retirement plan benefits); a description of the allocation procedure and the unit of measure (for example, fractional rule, based on years of employment); a description of the allocation of age- or service-dependent benefits; and a description of any adjustments made to reflect limits on benefit accruals or varying benefit accrual rates under the benefit formula;
- d. a description of the benefits being valued (including applicable ancillary benefits) and any significant benefits of which the actuary has knowledge that are not included in the actuarial valuation;
- e. a description of each actuarial assumption; and

- f. the source of any prescribed measurement date, allocation date, allocation method, actuarial assumption, selection process, or other prescribed item that has a material effect upon the actuarial valuation results.

If the actuary has used a prescribed measurement date, allocation date, allocation method, actuarial assumption, selection process, or other prescribed item, the communication should so disclose. The actuary may also choose to disclose results that represent the actuary's own opinion as to the value of the retirement plan benefits.

Appendix 1

Background and Current Practices

Note: This appendix is provided for informational purposes, but is not part of the standard of practice.

Measurement of Retirement Plan Benefits in Domestic Relations Actions

State statutes governing domestic relations actions generally take one of three approaches to the division of marital property:

1. Under the common-law approach, any particular asset is generally awarded to the party who contributed the asset to the marriage. In the case of retirement plan benefits, the entire retirement plan benefit is generally awarded to the covered party. Thus, there is generally no need for an actuarial valuation of the retirement plan benefit in a common-law state.
2. Under the community-property approach, all assets accumulated during the marriage are subject to division between the parties. This approach may require a monetary value to be placed on retirement plan benefits.
3. The equitable-distribution approach is a less rigid approach that gives some weight to assets contributed to the marriage and some weight to other criteria, such as the length of the marriage. This approach may require a monetary value to be placed on retirement plan benefits.

Determining the actuarial present value of retirement plan benefits that are marital property typically involves the following steps:

1. identify the measurement date, the allocation date, the allocation period, potential retirement plan benefits, the contingencies that may affect payment of those benefits, and any requirements applicable in the legal jurisdiction;
2. project the timing and amounts of potential benefit payments (which may be contingent upon the occurrence of specified events), applying the selected or prescribed allocation method and applicable economic assumptions, and assuming that any required contingencies are met;
3. calculate expected payments by multiplying each potential payment determined in (2) by the probability that the required contingencies are met, and applying the selected or prescribed demographic and other assumptions; and

4. discount the expected payments determined in (3) back to the measurement date, using the selected or prescribed discount rate.

Step (2) entails the determination of the portion of the benefit payments that is marital property. This determination is made as of an allocation date by means of an allocation method. In general, allocation methods may be characterized as either direct tracing methods or fractional rule methods, as described in section 3.3.2 and illustrated in appendix 2. In many jurisdictions, the allocation date and method have been established by applicable law; in others there is no legally prescribed approach, and the allocation date or method may be an issue in the domestic relations action.

Steps (2) through (4) require a measurement date and a number of different actuarial assumptions (see section 3.3.3). In some legal jurisdictions, applicable law prescribes the measurement date and certain actuarial assumptions, such as the discount rate, mortality table, and retirement assumption. Similarly, applicable law may prohibit the use of certain types of actuarial assumptions, such as a compensation scale or voluntary turnover assumption. In some jurisdictions, the process the actuary must use to select the assumptions is prescribed; for example, the actuary might be required to assume that retirement occurs at the age at which the retirement plan benefit is most valuable. In other jurisdictions, there are no legally prescribed or prohibited actuarial assumptions, measurement dates, or selection methods.

Because of the widely divergent approaches prescribed by or available in different jurisdictions, it is clear that there can be no uniform national approach to the actuarial valuation of retirement plan benefits. In many parts of the country, the law in this field is still evolving, while elsewhere there are governing statutes or a substantial body of established precedent. Where choice of method or assumption is allowed by law, a wide difference can exist between the values computed by different actuaries—a difference that may be attributable not to errors on the part of either actuary, but to legitimate differences of opinion as to the appropriate measurement date, allocation date, allocation method, or actuarial assumptions.

Division of Retirement Plan Benefits in Domestic Relations Actions

Alternative methods for the division of retirement plan benefits that are marital property may include the award of the retirement plan benefits to one party, with other marital property awarded to the other party, as well as the direct division of the retirement plan benefits of either party by an appropriate court order.

The types of court orders available may include the following:

1. a QDRO for a retirement plan covered by ERISA;
2. a qualifying court order for a federal government retirement plan, such as the Civil Service Retirement System, the Federal Employees' Retirement System, the Federal Thrift Savings Plan, and military retirement systems;

3. a court order mandated by local law for the division of retirement plan benefits earned under a retirement plan sponsored by a state, county, municipality, school district, or other governmental entity; or
4. a court order dividing benefits earned under a nonqualified retirement plan.

For certain types of retirement plans, there may be no provision in the law to permit division or assignment by court order.

Appendix 2

Illustrations of Allocation Methods

Note: This appendix is provided for informational purposes, but is not part of the standard of practice.

Basic Information

The plan provides a retirement plan benefit equal to 1% of the final year's compensation multiplied by years of service. Accrued benefits vest after 5 years of service, and participants are eligible to retire early at age 55 if they have completed 10 years of service. Normal retirement is at age 65. The covered party joined the plan at age 25, was married at age 29, and is age 40 at the allocation date. The covered party's historical service, compensation, accrued benefit, and vested accrued benefit are shown in the following table.

| Age | Completed Years of Service | Prior Plan Year's Compensation | Accrued Benefit | Vested Accrued Benefit |
|------------|---|---|----------------------------|---------------------------------------|
| 26 | 1 | \$11,500 | 115 | 0 |
| 27 | 2 | \$12,500 | 250 | 0 |
| 28 | 3 | \$14,000 | 420 | 0 |
| 29 | 4 | \$14,500 | 580 | 0 |
| 30 | 5 | \$15,000 | 750 | 750 |
| 31 | 6 | \$15,500 | 930 | 930 |
| 32 | 7 | \$16,750 | 1,173 | 1,173 |
| 33 | 8 | \$18,000 | 1,440 | 1,440 |
| 34 | 9 | \$19,000 | 1,710 | 1,710 |
| 35 | 10 | \$20,000 | 2,000 | 2,000 |
| 36 | 11 | \$23,500 | 2,585 | 2,585 |
| 37 | 12 | \$25,000 | 3,000 | 3,000 |
| 38 | 13 | \$27,500 | 3,575 | 3,575 |
| 39 | 14 | \$29,000 | 4,060 | 4,060 |
| 40 | 15 | \$33,000 | 4,950 | 4,950 |

Direct Tracing Allocation Method

In the direct tracing method, the portion of the retirement plan benefit that is often considered to be marital property is equal to the actual benefit accrued during the allocation period (typically the period from the date of marriage to the allocation date). For example, in applying direct tracing to a defined benefit pension plan, the portion of the retirement plan benefit included in marital property would generally be the increase from the accrued benefit, if any, at the marriage date to the accrued benefit at the allocation date. If the direct tracing method were applied to the data given in the table above, subtracting the \$580 accrued benefit at the date of marriage from

the \$4,950 accrued benefit at the allocation date would give the portion of the accrued benefit that is marital property: \$4,370.

Alternatively, the direct tracing method could be applied to the covered party's vested accrued benefit. Under this approach, the entire \$4,950 is marital property because the vested accrued benefit was \$0 at the date of marriage.

Fractional Rule Allocation Method

The fractional rule method allocates the retirement plan benefit by multiplying the retirement plan benefit by a fraction. The fraction may be based on compensation, contributions, benefit accrual service, plan participation, employment, or other relevant historical data. The numerator is equal to the selected measure accrued during the allocation period (typically the period from the date of marriage to the allocation date). The denominator is equal to the selected measure accrued during the total period in which the retirement plan benefit is earned. When the selected measure is an elapsed time period, this method is commonly referred to as the *time rule*.

If the fractional rule method based on benefit accrual service were applied to the data in the table above, the \$4,950 accrued benefit at the allocation date would be multiplied by the fraction ($11 \div 15$) because the covered party was married for 11 of the 15 years over which the benefit was accrued. The portion of the accrued benefit that is marital property is \$3,630.

If the fractional rule method were based on compensation instead, the numerator of the fraction would be compensation earned from the date of marriage to the allocation date (\$242,250), and the denominator would be the covered party's total compensation earned from employment date to the allocation date (\$294,750).

When the \$4,950 accrued benefit is multiplied by the fraction ($\$242,250 \div \$294,750$), the portion of the accrued benefit that is considered to be marital property is \$4,068.

Allocation Method for Age- or Service-Dependent Benefits

Under both the direct tracing and fractional rule allocation methods, the allocation of age- or service-dependent benefits must be defined. Age- or service-dependent benefits are benefits for which the amount or timing of benefit payments depends on the covered party's age or length of service. Subsidized early retirement plan benefits are often age- or service-dependent. For example, a retirement plan might provide that the benefit payable upon early retirement at age 55 is 100% of the accrued benefit if the participant has completed at least 25 years of service, and 50% of the accrued benefit otherwise.

If the covered party has not satisfied the eligibility requirements at the allocation date but remains employed by the plan sponsor, alternative approaches are available. One approach would exclude from marital property any age- or service-dependent benefit that is available only

if the covered party remains employed after the allocation date. A second approach would include such benefits in marital property under the assumption that the covered party will remain employed by the plan sponsor until eligibility conditions for the higher benefit level are satisfied. These two approaches may produce quite different results. Under the early retirement provision described above, including the value of the 25-years-of-service subsidy in marital property could double the value of the retirement plan benefit.

As these examples illustrate, retirement plan benefits included in marital property can vary substantially depending on the allocation method used. This highlights the importance of the point raised in the last paragraph of section 3.3.2. An actuary working in an adversarial situation where different approaches have been proposed or used should inform the actuary's client of the nature of those differences and the financial consequences of choosing one approach over another.

Appendix 3

Comments on the 1998 Second Exposure Draft and Committee Responses

The second exposure draft of this proposed actuarial standard of practice (ASOP) was issued October 1998, with a comment deadline of April 1, 1999. (Copies of the first exposure draft, and the second exposure draft, which contains comments on the first, are available from the ASB office.) Thirteen comment letters were received. The Pension Committee of the ASB carefully considered all comments received. Summarized below are the significant issues and questions contained in the comment letters, printed in standard type. The committee's responses to these issues and questions appear in **boldface**.

General Comments

A number of commentators expressed the view that the second exposure draft was an improvement over the first exposure draft.

A number of comments were received that clearly reflected practices and rules relating to only certain jurisdictions. **The committee feels strongly that the standard must be relevant to all jurisdictions. Therefore, the text was not changed.**

One commentator felt that the standard should include an explicit discussion of remarriage rates. **The committee believes that a detailed discussion of remarriage rates would be beyond the scope of the standard.**

Transmittal Memorandum

In the transmittal memorandum for the second exposure draft, the committee requested comment on the following:

1. Does the text added to sections 3.3.3(b), Mortality Assumption, and 3.3.3(f), Disability Assumption, regarding the health of the covered party and spouse, place an unreasonable burden on the actuary to inquire as to the health of the covered party and spouse and make underwriting judgments based on this information?
2. Does the revised text of section 3.3.3(i), Growth of Individual Account Balances, adequately address the valuation of cash balance plans and floor-offset arrangements?

There was little direct reply to these questions. One commentator did approach the issue by describing his practice of cursory investigation of health factors when making mortality assumptions for section 3.3.3(b), but did not seem to feel that the standard was imposing additional burden.

One commentator expressed approval of section 3.3.3(i) in its present form. **The committee accordingly made no substantive changes in these sections.**

Section 1. Purpose, Scope, and Effective Date (now titled Purpose, Scope, Cross References, and Effective Date)

Section 1.4, Effective Date—One commentator felt that a three-month lag between Board approval and required implementation was not long enough for the profession to adjust to the changes. **The committee agreed and changed the effective date to March 31, 2000.**

One commentator requested clarification on whether the effective date refers to the performance of the assignment or to the engagement for the assignment. **The committee modified the wording to clarify that the standard refers to the time when the actuary is first engaged to perform an assignment and does not refer to the time the work is performed.**

Section 2. Definitions

Section 2.6, Allocation Period—One commentator suggested substituting *coverage period* for *allocation period*. **Since the coverage period is not always the allocation period, the committee chose to retain the term *allocation period* as defined.**

Section 2.17, Spouse—One commentator objected to the nonstandard use of the term *spouse* to include children. **This definition also received comment after the first exposure draft. On revisiting the issue, the committee reworded the definition to improve clarity, but retained a “nonstandard” usage.**

Section 3. Analysis of Issues and Recommended Practices

Section 3.2.2, Disclose Any Conflicts of Interest—As after the first exposure draft, a number of letters again reflected concern about the broad language dealing with *personal relationship* and conflicts of interest. Some new language was suggested. **The committee discussed the matter at some length, but ultimately decided not to change the language. The committee notes that the term *personal relationship* is not intended to encompass casual acquaintance.**

Section 3.2.3, Determine the Nature and Scope of the Engagement—One letter suggested that paragraph (g) be amended to indicate that the actuary was assisting legal counsel. **The committee did not agree. The actuary may be assisting a court or judge.**

Section 3.2.5, Be Familiar with Applicable Law—One commentator suggested that *applicable law* be expanded to include significant case law. **The committee noted that *applicable law*, as defined in section 2.7, already includes case law.**

One commentator asked whether the discussion of assumption selection applies to calculations of the final annuity benefit amounts payable from a plan under a QDRO. The commentator expressed the opinion that this discussion should not apply to such calculations, because the

terms of the plan, including its provisions regarding the basis of actuarial equivalence, would govern these calculations. **The committee agreed and added language to clarify that this section does not apply to the review or implementation of a DRO.**

Section 3.3.1, Information Requirements—One commentator suggested more general language to avoid suggesting that the list of circumstances was fixed. **The committee edited the text to clarify that the list is not all-inclusive.**

One letter suggested adding the phrase *that are within the actuary's purview to judge* after the phrase *the actuary is responsible for reviewing, when practicable, the reasonableness of the data supplied*. **The committee believes that the current text gives the actuary sufficient discretion regarding data review.**

One commentator argued that the direct tracing allocation method ought to be the only one endorsed. **The committee disagreed and maintained the inclusion of the fractional rule method. The committee had reached a similar decision earlier, in response to comments on the first exposure draft.**

Section 3.3.3(a), Discount Rate—One letter suggested replacing the words *low-risk* with *risk-appropriate*, implying that investment aggressiveness or investment acumen of the covered party or spouse is a factor to be considered. **The committee disagrees. References to *facts and circumstances* are intended to be references to the nature of the plan and its provisions, not references to the investment expertise of a covered party or spouse.**

Section 3.3.3(b), Mortality Assumption—One commentator wanted the leeway to choose the mortality table to use. **The committee believes that the text gives the actuary the leeway to choose the mortality table.**

One commentator invited the committee to make a choice between unisex mortality tables and sex-specific tables, and also suggested replacing the word *participant* with *covered party* in the last line. **The committee declined to take a stance on mortality table preference, but agreed to adopt the wording suggested.**

Section 3.3.3(c), Annuity Purchase—One commentator questioned the use of commercial annuity purchase rates as an alternative to explicit selection of mortality and discount rates. This commentator considers it inappropriate to use rates loaded for expenses and profits. **The committee decided not to exclude this generally accepted alternative to explicit selection of mortality and discount rates.**

Section 3.3.3(d), Retirement Assumption—One letter suggested that section 3.3.3(d)(5) be amended to specifically take into account when the receipt of retirement benefits is most valuable. **The committee believes that the current text encompasses this concept.**

One commentator objected to the idea that statements concerning anticipated retirement age should not be given undue weight and instead called for the “utmost respect” for such statements. **The committee disagreed.**

Section 3.3.3(e), Automatic Cost-of-Living Adjustments (now titled Cost-of-Living Adjustments)—One commentator disagreed with the idea that it might sometimes be appropriate to assume future ad hoc cost-of-living adjustments. **The committee did not clarify the circumstances under which it might be acceptable to assume a nonautomatic cost-of-living increase, but the title of the section was changed to show that both automatic and nonautomatic cost-of-living increases are covered.**

Another commentator noted that the word *however* at the beginning of the last sentence suggested a contrast that was not present. **The committee agreed and deleted the word.**

Section 3.3.3(h), Compensation Scale—One commentator suggested that the standard include a direct reference to the Social Security Administration wage index. **The committee declined to make a change in this section.**

One letter suggested that the section was too limiting and suggested language similar to that used in the first exposure draft. **The committee expressed satisfaction with the current language.**

Section 3.3.4, Valuation Process—One commentator wanted codification of the procedure of looking to the plan assumptions and methods, suggesting that the standard’s requirements would introduce too much subjectivity. **The committee considers it inappropriate in this context to calculate present values by automatically using assumptions inherent in the plan’s basis of actuarial equivalence. As stated in section 3.3, the goal of performing an actuarial valuation is to provide a reasonable and objective assessment of the value of retirement benefits that are marital property. The plan’s actuarial equivalence basis may or may not be reasonable or appropriate for the specific circumstances.**

Section 3.3.5, Computing After-Tax Values—One letter expressed concern that this section, as well as the standard as a whole, would be interpreted as prohibiting the actuary from providing services in this area. **The committee does not believe the standard is open to this narrow construction.**

Section 3.3.7, Consistency with the Actuary’s Previous Actuarial Valuations—One commentator objected to, and others expressed concern about, the requirement of consistency because it limits the ability of the actuary to advocate for the client. **This topic also received comment after the first exposure draft. The committee reviewed the matter extensively and reiterated its strong position that the credibility of the profession is paramount. The committee made no changes.**

Section 3.4.4, Providing Expert Testimony—One letter objected to the requirement that the actuary state when a valuation prepared using dates, methods, or assumptions prescribed by applicable law does not necessarily reflect the actuary’s own expert opinion. **After much**

discussion, the committee agreed, removed the requirement, and softened the wording generally.

Section 3.5, Providing Guidance on the Division of Retirement Plan Benefits—One commentator suggested raising the standard of required actuarial expertise to include knowledge about the “tax consequences of various approaches to division of retirement plan benefits.” **The committee did not agree.**

Section 4. Communications and Disclosures

Section 4.3, General Disclosures—A number of letters protested that disclosure requirements were unnecessarily onerous. The first exposure draft met a similar response. **The committee agreed with those commentators who argued that disclosing the legal jurisdiction was not necessary for services such as reviewing or implementing a DRO. Section 4.3(e) was moved to become section 4.4, Actuarial Valuation Results, subparagraph (a), and the phrase *if applicable* was added at the end (after *domestic relations action*). The remaining subparagraphs were renumbered accordingly, as were the subparagraphs of section 4.4.**