

ASOP No. 1—March 2013

Appendix 2

Comments on the Exposure Draft and Responses

The exposure draft of the Introductory ASOP was issued in December 2011 with a comment deadline of May 31, 2012. Thirteen comment letters were received, some of which were submitted on behalf of multiple commentators, such as by firms or committees. For purposes of this appendix, the term “commentator” may refer to more than one person associated with a particular comment letter. The General Committee of the Actuarial Standards Board carefully considered all comments received, and the ASB reviewed (and modified, where appropriate) the changes proposed by the General Committee.

Summarized below are the significant issues and questions contained in the comment letters and the responses.

The term “reviewers” in appendix 2 includes the General Committee and the ASB. Also, unless otherwise noted, the section numbers and titles used in appendix 2 refer to those in the exposure draft.

GENERAL COMMENTS	
Comment	A number of commentators indicated that the Introductory ASOP needs a number (for example, ASOP No. 0 or ASOP No. 1) so that actuaries understand that it is an ASOP that contains guidance.
Response	The reviewers agree and numbered the Introductory ASOP as ASOP No. 1. The previous ASOP No. 1, <i>Nonguaranteed Charges or Benefits for Life Insurance Policies and Annuity Contracts</i> , has been renumbered as No. 2, since ASOP No. 2, <i>Recommendations for Actuarial Communications Related to Statements of Financial Accounting Standards Nos. 87 and 88</i> , was repealed in March 2011.
Comment	One commentator suggested moving the general deviation language from ASOP No. 41, <i>Actuarial Communications</i> , to the Introductory ASOP, and having ASOP No. 41 deal only with deviations related to communication of results.
Response	The reviewers believe ASOP No. 41 is an appropriate vehicle for guidance on communicating deviation from any ASOP, because ASOP No. 41 applies to actuaries issuing actuarial communications within any practice area. As a result, no change was made.

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SECTION 1: OVERVIEW	
Comment	Some commentators believed that the sentence “Each of these organizations requires its members, through its <i>Code of Professional Conduct</i> ¹ (Code), to observe ASOPs when rendering actuarial services in the United States,” contradicts the Code because it is incomplete (i.e. the sentence doesn’t mention that actuaries must also under the Code satisfy standards of practice in a non-U.S. jurisdiction where they render services).
Response	The reviewers disagree and made no change. The reviewers believe the statement is accurate as written, and is not inaccurate merely because it does not also describe Code requirements that relate to actuarial standards of practice that exist in other jurisdictions in which the actuary may render actuarial services.
Comment	One commentator suggested revising the sentence “Each of these organizations requires its members, through its Code ² , to observe ASOPs when rendering actuarial services in the United States,” to match the wording in the Code by replacing “observe” with “satisfy applicable.”
Response	The reviewers made the suggested change but note that the Code uses both terms in the discussion of this topic.
Comment	One commentator indicated that the sentence “The ASOPs provide a basic framework that will typically accommodate these additional considerations.” should be revised to read “The ASOPs provide a basic framework that should accommodate these additional considerations.”
Response	The reviewers agree and made the following change: “The ASOPs provide a basic framework that is intended to accommodate these additional considerations.”
SECTION 2: DEFINITIONS, DISCUSSIONS, AND RELATED GUIDANCE	
Comment	One commentator suggested that the definition of Deviation (“The act of departing from the guidance of an ASOP.”) in ASOP No. 41 also be included here.
Response	The reviewers agree and added the definition.
Section 2.1, Terms of Construction	
Comment	One commentator asked whether the Committee meant “under ordinary circumstances” rather than “under the circumstances” in “ <i>Must</i> —“Must” as used in the ASOPs means that, under the circumstances, the actuary has no reasonable alternative but to follow a particular course of action.”
Response	The reviewers disagree that “under ordinary circumstances” was intended, but note that changes made to the section should eliminate potential confusion.

¹ These organizations adopted the *Code of Professional Conduct* effective January 1, 2001.

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Comment	<p>Many comments were received with respect to the terms “must,” “should,” and “should consider,” as follows:</p> <ul style="list-style-type: none">• Commentators indicated that, because failure to follow a “must” or a “should” statement both constitute a deviation requiring disclosure, the distinction between the two terms was not clear.• Commentators objected to the concept that failure to comply with a “should” statement constitutes a deviation that must be disclosed under ASOP No. 41. These commentators indicated that failure to follow a “should” statement had not previously been understood to be a deviation requiring disclosure, so that ASOPs were in effect being retroactively changed, and actuaries should be afforded an opportunity to comment on the use of the word should in the various ASOPs in that light.• A commentator questioned whether a definition of “should consider” was needed.• A commentator requested that the ASOP specifically indicate that it does not create a duty to document actions considered but not taken and the reasons therefor.
Response	<p>To assist in reviewing the comments, the reviewers analyzed the use of the terms “should,” “should consider,” and “must” in the various ASOPs, and reached the following conclusions:</p> <ul style="list-style-type: none">• In order to better contrast the meaning of “must” versus “should,” the definitions have been combined into a single “Must/Should” discussion that defines each term and highlights the distinction between the terms.• The Introductory ASOP reaffirms that a failure to follow a “should” statement constitutes a deviation.• The reviewers agree that a definition of “should consider” is not needed. The terms “must” and “should” are generally followed by an action (for example, “disclose” or “document”). When the term “should consider” is used, the action to be performed (or to be disclosed as a deviation if not performed) is to consider something. Thus, there is no need to separately define “should consider.” The revised ASOP makes clear that if the actuary considers something the ASOP indicates he or she should consider, but determines that the item being considered is inappropriate or impractical, the actuary has complied with the guidance and there is no deviation to be disclosed.• Because the ASOP does not indicate that actions considered but not taken (and the reasons therefor) must be disclosed, the reviewers do not believe it is necessary for the ASOP to indicate that they need not be disclosed. Thus, no changes have been made in response to this comment.

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Comment	A commentator requested that a statement “Failure to follow the course of action which follows ‘may’ does not constitute a deviation” be added.
Response	Because the ASOP does not suggest that failure to follow the course of action that follows “may” constitutes a deviation, the reviewers do not believe it is necessary for the ASOP to indicate that it would not be a deviation. Therefore, no change was made in response to this comment.
Section 2.2, Actuarial Services	
Comment	A commentator indicated that “actuarial services” is defined in ASOP No. 41 and questioned whether the definition should be in two ASOPs. In addition, a commentator suggested a small change in the definition in the Introductory ASOP to match the definition in the Code (i.e., change “on” to “upon” in “Such services include the rendering of advice, recommendations, findings or opinions based on actuarial considerations.”). Other commentators suggested adding “but are not limited to” after “Such services include” in the sentence above.
Response	<p>Because the term actuarial services is applicable to all ASOPs and used in nearly all of them, the reviewers decided that including the definition in the Introductory ASOP is appropriate. The reviewers also made the indicated change (i.e. “on” to “upon”) to match the definition in the Code (which also appears in ASOP No. 41).</p> <p>The reviewers decided not to add “but are not limited to” to the definition. The revised definition matches the definition in the Code. In addition, the reviewers believe the list of services in the definition to be illustrative rather than comprehensive.</p>
Section 2.3, Actuarial Soundness	
Comment	A commentator suggested that a statement be added indicating that “actuarial soundness” is not an actuarial concept, but is a concept imposed by outside entities. In addition, another commentator requested that the ASOP indicate that the term “actuarial soundness” only needs to be defined once in an actuarial communication. A third commentator indicated that in property and casualty ratemaking the term “actuarial soundness” is well defined by the Casualty Actuarial Society’s ratemaking principles, and should not need to be defined in an actuarial communication.
Response	The reviewers agree that the concept of actuarial soundness might be imposed by an outside entity and added a statement to that effect. However, the reviewers do not believe it is necessary to explicitly state that actuarial soundness need not be defined multiple times in a single actuarial communication, and no change has been made in this regard. With respect to the third comment, no change was made. The reviewers note that ASOP No. 41 already provides that an actuarial communication can direct the reader to information provided in other documents and thus an actuary can direct the reader to the “actuarial soundness” definition intended.

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Section 2.4, Known	
Comment	One commentator indicated that the third sentence in this discussion, which reads “The actuary cannot reasonably be expected to act based on information that was not provided” could be interpreted to excuse an actuary from making reasonable inquiries to try to obtain information.
Response	The reviewers do not believe the sentence added anything to the discussion and deleted the sentence. This should avoid the potential misinterpretation.
Section 2.5, Materiality	
Comment	There were a number of comments on this section: <ul style="list-style-type: none">• A commentator suggested that the ASOP not define material since “materiality” standards are normally imposed by others, and where they aren’t there isn’t a difference between significance and materiality. The commentator suggested using the materiality definition to define significant instead.• A commentator indicated that the statement “The provisions of ASOPs need not be applied to immaterial items” was somewhat circular, because an actuary would need to apply the ASOP to determine that an item is immaterial and that the ASOP allows it to be disregarded.• A commentator indicated that information should be required to be disclosed to allow others to make an assessment of the reasonability of the decision to exclude items as immaterial.
Response	The reviewers note that the words “material” and “materiality” are used in a number of ASOPs and, therefore, retaining the discussion is appropriate. The reviewers disagree with the other two comments.
Section 2.6, Practical or Practicable	
Comment	One commentator wanted to add the statement “No ASOP requires the actuary to perform a task that in the actuary’s professional judgment is impractical based on the needs of and contractual relationship with the principal.” Another commentator wanted the terms “practical” and “reasonable” and the difference between them clarified further.
Response	The reviewers consider the proposed statement overly broad and note that deviation from the guidance in an ASOP is permitted when appropriate, with disclosure in accordance with ASOP No. 41. Therefore, no changes were made in response to the first comment. In general, the reviewers believe that the term “practical” applies to a process while “reasonable” applies to a result, and changes were made in the discussion of “reasonable” to make that clear.

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Section 2.8, Professional Judgment	
Comment	A commentator suggested that the phrase “recognizing that reasonable differences may arise when actuaries project the effect of uncertain events” in this discussion also belonged in the discussion of reasonable.
Response	The reviewers agree and added the sentence “Because actuarial practice commonly involves the estimation of uncertain events, there will often be a range of reasonable methods and assumptions, and two actuaries could follow a particular ASOP, both using reasonable methods and assumptions, and reach different but reasonable results” to the discussion of reasonable.
Section 2.9, Reasonable	
Comment	A commentator felt that the discussion should focus on “the act of reasoning or reaching conclusions based on supported evidence, logical argument and actuarial judgment,” which the commentator believes would better parallel the usage in other ASOPs. Another commentator suggested avoiding the use of the stem “reason” or “reasonable” in the discussion.
Response	The reviewers do not agree. As mentioned above, the reviewers believe that the discussion of reasonable should focus on producing a reasonable result, and the discussion was modified to accomplish this by adding to the discussion “to produce a ‘reasonable’ result when rendering actuarial services.”
Section 2.11, Significance/Significant	
Comment	There were several comments on this discussion, primarily indicating that there was not a clear distinction between the terms material and significant.
Response	The reviewers note that there are several different common uses of the word significant, and different usages are used in different ASOPs. Section 2.11 was intended as a discussion of the various ways in which the term is used, rather than a definition. The discussion was expanded to include an additional common usage (“An event may be described as significant if the likelihood of its occurrence is more than remote.”). With the changes to the wording for both “materiality” and “significance/significant,” the reviewers believe there is a clearer distinction between the two terms.

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<u>SECTION 3. PURPOSE AND FORMAT OF ACTUARIAL STANDARDS OF PRACTICE</u>	
Comment	A commentator indicated that the placement of this section within the body of the Introductory ASOP is inconsistent with the Introductory ASOP itself being an ASOP, because there is nothing in this section that an actuary must understand or do. The commentator suggested moving this section to the appendix or another document.
Response	The reviewers note that the Introductory ASOP is unique and can have a different structure from the other ASOPs. The reviewers decided to leave this within the body of the Introductory ASOP to ensure it received appropriate visibility.
Section 3.1.2	
Comment	A commentator believed the term “production in litigation” should have been “results in litigation” in the sentence “ASOPs are not intended to shift the burden of proof or production in litigation, and failure to satisfy one or more provisions of an ASOP should not, in and of itself, be presumed to be malpractice.”
Response	The reviewers changed the wording to clarify that a deviation from a standard should not result in the presumption of malpractice.
Comment	A commentator believed that the sentence “Other individuals should consider obtaining the advice of a qualified actuary before making use of, or otherwise relying upon, ASOPs” should be replaced with “ASOPs should not be used or relied upon by those who are not actuaries.”
Response	The reviewers disagree and made no change.
Section 3.1.4	
Comment	A commentator wanted to add “generally” before “not narrowly prescriptive,” and “typically” before “neither dictate” in the following sentence “The ASOPs are not narrowly prescriptive and neither dictate a single approach nor mandate a particular outcome.” Another commentator noted that some sections of ASOPs are prescriptive.
Response	The reviewers agree that adding “generally” to the sentence is appropriate and made the change but do not believe the addition of “typically” would enhance the understanding.

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Comment	A commentator suggested that the sentence “For example, because actuarial practice commonly involves the measurement of uncertain events, there will often be a range of reasonable assumptions, and two actuaries could follow a particular ASOP, both using reasonable methods and assumptions, and reach different but reasonable results” be moved into the discussion of reasonable.
Response	The reviewers agree and moved the sentence (with minor wording changes).
Section 3.1.5	
Comment	A commentator thought that this point (that an actuary may deviate from an ASOP to comply with applicable statutes, regulations or other binding authority) was better explained in other ASOPs and that the language should be modified.
Response	The reviewers believe the language is clear and consistent with the Code, and therefore made no change.
Section 3.1.6	
Comment	A commentator suggested that the word “might” be changed to “may” in the sentence “Unlike the ASOPs, which are binding upon actuaries, other actuarial literature provides information that an actuary might choose, but is not required, to consider when rendering actuarial services.”
Response	The reviewers agree and made the change.
Section 3.1.7	
Comment	A commentator suggested this section be revised to indicate that early adoption of the revised Introductory ASOP is permitted.
Response	The reviewers believe that there is nothing in this revised Introductory ASOP that would result in noncompliance with the current Introduction to the ASOPs. Therefore, no change was made.
SECTION 4: COMPLIANCE WITH ASOPS	
Section 4.1	
Comment	A commentator found this confusing, saying that you can deviate from an ASOP if you disclose the deviation, so failure to comply with an ASOP is not a breach of the Code. Another commentator suggested adding information to further clarify that deviations, with appropriate disclosures, are permitted.
Response	The reviewers note that the deviation from the guidance in an ASOP and disclosing the deviation is not a failure to comply with the ASOP, as discussed in section 4.5. Accordingly, no substantive changes were made in response to these comments, although the second sentence in this section was simplified.
Comment	Some commentators believe this section belongs in the appendix, not the body of the ASOP, because it doesn’t tell the actuary to do anything.
Response	Failure to comply with the ASOPs results in a breach of the Code. The reviewers believe this is an important point that belongs in the body of the Introductory ASOP. Therefore, no change was made.

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Comment	A commentator suggested adding “may” before “subject the actuary” in the sentence “Such breaches subject the actuary to the profession’s counseling and discipline processes.”
Response	The reviewers note that a breach subjects the actuary to ABCD processes, even though it may not result in ABCD action. Therefore, no changes were made.
Section 4.2	
Comment	A commentator believes that the sentence “It is not appropriate for users of ASOPs to make a strained interpretation of the provisions of an ASOP “ is not needed because the point is covered by the first sentence, and also indicated that an undefined term like “strained” should not be used.
Response	The reviewers believe the second sentence differs from the first and decided against deleting it.
Section 4.3	
Comment	A commentator suggested that the word “relevant” be replaced with “applicable” in the sentence “Actuaries should comply with those ASOPs that are relevant to the task at hand; not all ASOPs will apply.” because the Code doesn’t use the word “relevant,” it uses “applicable.”
Response	The reviewers agree with replacing “relevant” with “applicable” and made that change.
Comment	A commentator suggested that the following sentence be deleted: “An ASOP should not be interpreted as having applicability beyond its stated scope and purpose” because the commentator believes it discourages an actuary from looking at ASOPs applicable to similar issues when there is no ASOP directly applicable, which the commentator believes to be a good practice that should not be discouraged.
Response	The reviewers believe that clearly defined applicability is important and does not discourage other uses. Therefore, the sentence was not deleted.
Comment	A commentator questioned whether the actuary has unfettered discretion to come to a conclusion about which ASOPs apply, even though the ASOPs may seem to suggest otherwise, and whether the actuary’s determination was open to challenge.
Response	The reviewers do not agree that the section suggests that the actuary has unfettered discretion and, therefore, made no change.
APPENDIX 1: BACKGROUND AND ADDITIONAL INFORMATION	
Role and Scope of ASOPs	
Comment	A commentator objected to the use of the phrase “to better define” in the first sentence.
Response	The reviewers agree and replaced the phrase “to better define” with “to clarify” in the first sentence.

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Comment	<p>A commentator indicated that the sentence below belongs in the body of the ASOP, not in appendix 1, because the commentator believes it is requiring the actuary to do something.</p> <p style="padding-left: 40px;">“Because the ASOPs are not overly prescriptive, and allow for disclosed deviations, the ASOP framework is designed to accommodate the actuary’s providing high quality actuarial services and acting with integrity, taking all appropriate considerations into account.”</p>
Response	<p>The reviewers do not believe this sentence adds any guidance and, therefore, made no change.</p>

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Response	The reviewers note that the Introductory ASOP is unique and can have a different structure from the other ASOPs. The reviewers decided to leave this within the body of the Introductory ASOP to ensure it received appropriate visibility.
Section 3.1.2	
Comment	A commentator believed the term “production in litigation” should have been “results in litigation” in the sentence “ASOPs are not intended to shift the burden of proof or production in litigation, and failure to satisfy one or more provisions of an ASOP should not, in and of itself, be presumed to be malpractice.”
Response	The reviewers changed the wording to clarify that a deviation from a standard should not result in the presumption of malpractice.
Comment	A commentator believed that the sentence “Other individuals should consider obtaining the advice of a qualified actuary before making use of, or otherwise relying upon, ASOPs” should be replaced with “ASOPs should not be used or relied upon by those who are not actuaries.”
Response	The reviewers disagree and made no change.
Section 3.1.4	
Comment	A commentator wanted to add “generally” before “not narrowly prescriptive,” and “typically” before “neither dictate” in the following sentence “The ASOPs are not narrowly prescriptive and neither dictate a single approach nor mandate a particular outcome.” Another commentator noted that some sections of ASOPs are prescriptive.
Response	The reviewers agree that adding “generally” to the sentence is appropriate and made the change but do not believe the addition of “typically” would enhance the understanding.

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Comment	A commentator suggested that the sentence “For example, because actuarial practice commonly involves the measurement of uncertain events, there will often be a range of reasonable assumptions, and two actuaries could follow a particular ASOP, both using reasonable methods and assumptions, and reach different but reasonable results” be moved into the discussion of reasonable.
Response	The reviewers agree and moved the sentence (with minor wording changes).
Section 3.1.5	
Comment	A commentator thought that this point (that an actuary may deviate from an ASOP to comply with applicable statutes, regulations or other binding authority) was better explained in other ASOPs and that the language should be modified.
Response	The reviewers believe the language is clear and consistent with the Code, and therefore made no change.
Section 3.1.6	
Comment	A commentator suggested that the word “might” be changed to “may” in the sentence “Unlike the ASOPs, which are binding upon actuaries, other actuarial literature provides information that an actuary might choose, but is not required, to consider when rendering actuarial services.”
Response	The reviewers agree and made the change.
Section 3.1.7	
Comment	A commentator suggested this section be revised to indicate that early adoption of the revised Introductory ASOP is permitted.
Response	The reviewers believe that there is nothing in this revised Introductory ASOP that would result in noncompliance with the current Introduction to the ASOPs. Therefore, no change was made.
SECTION 4: COMPLIANCE WITH ASOPS	
Section 4.1	
Comment	A commentator found this confusing, saying that you can deviate from an ASOP if you disclose the deviation, so failure to comply with an ASOP is not a breach of the Code. Another commentator suggested adding information to further clarify that deviations, with appropriate disclosures, are permitted.
Response	The reviewers note that the deviation from the guidance in an ASOP and disclosing the deviation is not a failure to comply with the ASOP, as discussed in section 4.5. Accordingly, no substantive changes were made in response to these comments, although the second sentence in this section was simplified.
Comment	Some commentators believe this section belongs in the appendix, not the body of the ASOP, because it doesn’t tell the actuary to do anything.
Response	Failure to comply with the ASOPs results in a breach of the Code. The reviewers believe this is an important point that belongs in the body of the Introductory ASOP. Therefore, no change was made.

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Comment	A commentator suggested adding “may” before “subject the actuary” in the sentence “Such breaches subject the actuary to the profession’s counseling and discipline processes.”
Response	The reviewers note that a breach subjects the actuary to ABCD processes, even though it may not result in ABCD action. Therefore, no changes were made.
Section 4.2	
Comment	A commentator believes that the sentence “It is not appropriate for users of ASOPs to make a strained interpretation of the provisions of an ASOP “ is not needed because the point is covered by the first sentence, and also indicated that an undefined term like “strained” should not be used.
Response	The reviewers believe the second sentence differs from the first and decided against deleting it.
Section 4.3	
Comment	A commentator suggested that the word “relevant” be replaced with “applicable” in the sentence “Actuaries should comply with those ASOPs that are relevant to the task at hand; not all ASOPs will apply.” because the Code doesn’t use the word “relevant,” it uses “applicable.”
Response	The reviewers agree with replacing “relevant” with “applicable” and made that change.
Comment	A commentator suggested that the following sentence be deleted: “An ASOP should not be interpreted as having applicability beyond its stated scope and purpose” because the commentator believes it discourages an actuary from looking at ASOPs applicable to similar issues when there is no ASOP directly applicable, which the commentator believes to be a good practice that should not be discouraged.
Response	The reviewers believe that clearly defined applicability is important and does not discourage other uses. Therefore, the sentence was not deleted.
Comment	A commentator questioned whether the actuary has unfettered discretion to come to a conclusion about which ASOPs apply, even though the ASOPs may seem to suggest otherwise, and whether the actuary’s determination was open to challenge.
Response	The reviewers do not agree that the section suggests that the actuary has unfettered discretion and, therefore, made no change.
APPENDIX 1: BACKGROUND AND ADDITIONAL INFORMATION	
Role and Scope of ASOPs	
Comment	A commentator objected to the use of the phrase “to better define” in the first sentence.
Response	The reviewers agree and replaced the phrase “to better define” with “to clarify” in the first sentence.

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Comment	<p>A commentator indicated that the sentence below belongs in the body of the ASOP, not in appendix 1, because the commentator believes it is requiring the actuary to do something.</p> <p style="padding-left: 40px;">“Because the ASOPs are not overly prescriptive, and allow for disclosed deviations, the ASOP framework is designed to accommodate the actuary’s providing high quality actuarial services and acting with integrity, taking all appropriate considerations into account.”</p>
Response	<p>The reviewers do not believe this sentence adds any guidance and, therefore, made no change.</p>