

Appendix 2

Comments on the 2001 Exposure Draft and Task Force Responses

The exposure draft of this actuarial standard of practice (ASOP), titled *Expert Testimony by Actuaries*, was issued in March 2001, with a comment deadline of August 15, 2001. Eighteen comment letters were received. The Expert Witness Task Force, with the help of the General Committee, carefully considered all comments received. Summarized below are the significant issues and questions contained in the comment letters and the task force's responses.

GENERAL COMMENTS	
Comment	Some commentators suggested that the standard should more explicitly address the actuary's duty to the public and the actuarial profession by emphasizing objectivity and explicitly requiring the actuary to consider all material factors.
Response	The task force believes that the standard appropriately addresses the commentators' concerns and made no change.
Comment	One commentator suggested establishing a hierarchy of actuarial standards of practice to address potential conflicts between standards.
Response	The task force believes that the actuarial standards of practice appropriately address potential conflicts and, in any event, that the establishment of such a hierarchy would be beyond the scope of this standard.
Comment	Several commentators suggested editorial changes in various sections of the standard.
Response	The task force implemented such suggestions if they enhanced clarity and did not alter the intent of the section.
SECTION 1. PURPOSE, SCOPE, CROSS-REFERENCES, AND EFFECTIVE DATE	
Section, 1.1, Purpose	
Comment	One commentator suggested changing "the actuary" to "actuaries" in this section.
Response	The task force adopted the commentator's suggestion.
Section 1.2, Scope	
Comment	Some commentators expressed support for the scope of the proposed standard. One commentator suggested editorial changes to clarify this section. Another commentator suggested clarifying how an actuary might challenge existing precedent, law, or regulation.
Response	The task force adopted the commentators' proposed changes as appropriate.
Comment	One commentator stated that an actuary who challenges existing precedent, law or regulation should note that fact as part of the testimony.
Response	The task force believes that section 3.2 adequately addresses this point.

SECTION 2. DEFINITIONS	
Comment	One commentator suggested adding a definition of “declaration.”
Response	The task force believes that this term is adequately defined in common legal usage and that, therefore, no definition is needed.
Comment	One commentator suggested restoring the definition of “actuarial literature.”
Response	The term “actuarial literature” is not used in the standard and it is not the practice of the ASB to define terms that do not appear in a standard. The task force made no change.
Section 2.3, Actuarial Opinion	
Comment	One commentator suggested revising the definition of “actuarial opinion” to be “an opinion drawn by an actuary from actuarial knowledge or from the application of one or more actuarial methods and actuarial assumptions that the actuary endorses to a body of data.”
Response	The task force disagreed and made no change.
Section 2.7, Principal	
Comment	One commentator suggested changing this definition to provide a broader description of client relationships and the actuary’s duty to other participants in litigation.
Response	The definition is consistent with the <i>Code of Professional Conduct</i> and the task force believes that section 3.5 of the standard adequately addresses the actuary’s responsibilities to the various participants in litigation. No changes were made in the definition.
SECTION 3. ANALYSIS OF ISSUES AND RECOMMENDED PRACTICES	
Section 3.1, Review and Compliance	
Comment	One commentator thought the reference to the <i>Code of Professional Conduct</i> should have spoken to the Codes of the five U.S.-based organizations representing actuaries.
Response	The task force disagreed, noting that all of the U.S.-based organizations have adopted the same <i>Code of Professional Conduct</i> .
Section 3.3, Conflict of Interest	
Comment	One commentator suggested that Precept 7 of the <i>Code of Professional Conduct</i> be reprinted in this section.
Response	The task force disagreed.
Section 3.4, Advocacy	
Comment	One commentator suggested revising this section to be more specific in addressing particular circumstances.
Response	Although the task force did not agree that particular circumstances needed to be addressed more specifically, the task force did revise section 3.4 to emphasize the actuary’s responsibilities under the <i>Code of Professional Conduct</i>
Section 3.5, Identity of Principal	
Comment	One commentator suggested clarifying revisions to this section.
Response	The task force adopted the commentator’s suggestion.

Section 3.6, Prescribed or Alternative Methods and Assumptions	
Comment	Two commentators observed that this section was unclear.
Response	The task force disagreed, finding the guidance in this section clear and appropriate.
Comment	One commentator suggested that this section might be interpreted to require the actuary to disclose an excessively broad range of results.
Response	The task force disagreed and made no change.
Comment	One commentator suggested that this section be revised to direct the actuary to explain why the opinion lies within the reasonable range of results rather than requiring the actuary to identify particular results that might differ.
Response	The task force believes that the guidance in the standard is appropriate and made no change.
Comment	One commentator suggested that this section might be inconsistent with section 3.9, Cross-Examination.
Response	The task force disagreed.
Section 3.7, Hypothetical Questions	
Comment	One commentator suggested adding guidance on how the actuary should respond if required to answer a hypothetical question.
Response	The task force disagreed and made no change.
Section 3.9, Cross-Examination	
Comment	Some commentators believed that this section gave the actuary too much leeway to withhold information inimical to the principal.
Response	The task force disagreed, concluding that the guidance offered in this section is appropriate when considered in conjunction with section 3.4, Advocacy.
Comment	One commentator suggested deleting the last sentence of this section as unnecessary.
Response	The task force agreed that this sentence was redundant with section 3.10 and deleted it.
Section 3.10, Consistency with Prior Statements	
Comment	One commentator believed that the guidance in this section was generic and should be moved to the appendix.
Response	The task force believed the guidance was appropriately placed within the standard and made no change.
Section 3.11, Discovery of Error	
Comment	Some commentators suggested that the actuary's responsibility to disclose error should extend beyond disclosure to the actuary's principal.
Response	The task force disagreed, concluding that the scope of the actuary's responsibility is appropriately stated and noting that the <i>Code of Professional Conduct</i> and other Actuarial Standards of Practice also provide guidance on this issue.

Section 3.12, Limitation of Expert Testimony (previously titled, “Nature of the Forum”)	
Comment	One commentator expressed discomfort with the actuary’s merely reviewing and explaining the standard with the principal. Another commentator offered clarifying language which focused on the actuary’s presentation within a forum and the appropriate actions to be taken when constraints occur.
Response	The task force adopted part of the second commentator’s suggested language and strengthened the language dealing with constraints, thereby addressing the concerns of the first commentator as well.
SECTION 4. COMMUNICATIONS AND DISCLOSURES	
Section 4.2, Oral Testimony (previously titled “Oral Reports and Testimony”)	
Comment	One commentator suggested that an actuary be required to provide a written actuarial report or memorandum to support all oral testimony.
Response	The task force disagreed and made no change.
Section 4.3, Prescribed Statement of Actuarial Opinion	
Comment	Some commentators objected to characterizing expert testimony as a “prescribed statement of actuarial opinion” for purposes of the <i>Qualification Standards for Prescribed Statements of Actuarial Opinion</i> . Other commentators agreed with the characterization, while still others expressed support for the more limited approach described in the transmittal memorandum accompanying the exposure draft.
Response	After carefully considering all comments received, the task force decided to adopt the more limited language described in the transmittal memorandum.