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ASOP No. 34 Revision
Actuarial Standards Board
1850 M Street NW, Suite 300
Washington, DC 20036

Dear Sir or Madam:

This letter documents the response of Towers Watson to the Proposed Revision of Actuarial Standard of Practice (ASOP) No.34, *Actuarial Practice Concerning Retirement Plan Benefits in Domestic Relations Actions*, as requested in the Exposure Draft of September 2014.

Towers Watson is a global human capital and financial management consulting firm specializing in employee benefits, human capital strategies, and technology solutions. Towers Watson employs approximately 15,000 associates on a worldwide basis, over 1,100 of whom are members of U.S. actuarial bodies subject to the standards. The undersigned have prepared our company's response with input from others in the company.

Our comments generally support four central themes that we believe apply to the Actuarial Standards of Practice, and that can be found on our website at http://www.towerswatson.com/en/north-american-retirement-principles.

We appreciate the opportunity to comment, and note that most (although not all) of our comments relate to the standard as it applies to Domestic Relations Orders (DROs).

Our specific feedback on the Exposure Draft follows, beginning with the four questions listed in the *Request for Comments* section of the Exposure Draft.

Question 1 - *Will the proposed additional disclosures in section 4 improve understanding by users of the actuary's work?*

Yes, we believe the additional disclosures will improve understanding by users and, most importantly, by the intended users of the actuary's work.

Question 2 - *Will the proposed additional disclosures improve understanding among third parties of the differences between competing valuations of a pension benefit?*

We don't know who the third parties referred to above are. "Direct user" is defined, but "users" (as used in Question 1) and "third parties" (as used in Question 2) are not. Accordingly, it is not clear to us that improving the understanding of "third parties" should be an objective of the standard. We believe the additional disclosures discussed in Question 1 will improve understanding of all parties who have access to the actuary's work. However, we note that Section 4.1 of the Exposure Draft requires that the actuary's report take into account the background (presumably this means the knowledge level) of the "likely audience", so the understanding of third parties may not be enhanced to the same level if they are not part of the likely audience and do not have a similar knowledge level as the likely audience. In addition, any user of the actuary's work will obviously have a better understanding "of the differences between competing valuations of a pension benefit" only if he or she has access to a similar work product from both actuaries when there are competing valuations.

More broadly, we believe the use of the terms “users”, “direct users”, and “likely audience” need to be better explained, and also “third parties” if an objective of the standard is to improve understanding among third parties. However, we believe that the standard should focus solely on the needs of the “intended users”. With respect to DROs, the actuary is essentially being engaged to calculate benefits owed to parties by the plan, in the same way the plan sponsor might engage the actuary to perform any of the other types of more complex benefit calculations under the plan. Accordingly, we believe the “intended user” should be narrowly defined to be the principal (typically the plan sponsor) that has hired the actuary to either evaluate whether the DRO is administrable (e.g., provide advice with respect to whether the DRO is clear, covers all contingencies, and comports with plan terms) or to split benefits in accordance with the DRO. In such an assignment, we do not believe the standards of practice should require the actuary to do additional work that was not requested by the principal for the benefit of any third parties. With respect to actuarial services in which the actuary determines the present value of retirement benefits for purposes of having those present values considered with other marital assets in the division of property, we believe that “intended users” needs to be broader so that parties can understand and evaluate competing valuations, and for those purposes should be defined to include both parties to a domestic relations action, their respective attorneys, and any magistrate, arbitrator or other adjudicator involved in the action.

Question 3 - *Would you recommend additional changes to the guidance to limit the variations in valuation results or enhance understanding of the remaining differences?*

No, we believe the changes made strike the appropriate balance between recognizing that there may be significant, and yet wholly legitimate, differences in approach and result, and making sure that the intended users of the actuaries’ work have sufficient information to evaluate the information presented.

Question 4 - *Should the scope of this standard be expanded to apply to other post-employment benefits, such as medical benefits, that may also be considered as part of the domestic relations action*?

We believe so. While developing guidance that relates to other post-employment benefits is likely to pose additional measurement challenges, we believe there is no reason to exclude such benefits from the standard.

Exclusion of DROs from the Definition of Actuarial Valuation

In general, we like the manner in which DROs are handled in the Exposure Draft. Because performing benefit divisions under DROs is a very different activity than assigning a present value to pension benefits for purposes of an overall division of marital assets, and DRO work typically involves little to no choice by the actuary as to methodology or assumptions, DROs are excluded from the requirements of Section 3.3 (*Actuarial Valuation*), and are instead directly addressed by Section 3.6 *(Assisting in Drafting a Court Order)* and Section 3.7 (*Assisting in Reviewing or Implementing a Domestic Relations Order*).

However, DRO calculations still appear to meet the definition of an Actuarial Valuation, because DRO calculations normally include, as a component, determinations of actuarial present values (using assumptions specified in the pension plan document) due to different payment dates, payment forms and ages of the participant and alternate payee (AP). As a result, Section 4.4 (*Disclosures related to Actuarial Valuation Results*) would seem to apply to results of a division of retirement benefits under a DRO. We do not believe this is appropriate, as the division of retirement benefits under a DRO is akin to a calculation of plan benefits, with the benefits to be divided, the method of division, and the assumptions used in the calculation dictated by the terms of the plan and the DRO. Accordingly, we believe that the division of benefits under DROs should be specifically excluded from the definition of Actuarial Valuation in Section 2.1. This would result in the disclosure requirements of Section 4.4 appropriately not applying to DROs.

Other Specific Comments

Section 2.3 (Definition of Allocation Date) and Section 2.6 (Definition of Allocation Period) – We suggest changing the phrase "benefits earned during the marriage" to "benefits to be divided". DROs can and often do allocate benefits that are earned outside the marriage period. For example, the effect of future pay increases on benefits earned during the marriage may be included in the benefits divided, or a prorata part of the ultimate benefit, or even the full ultimate benefit; may be allocated to the AP. Benefits earned before the marriage may be divided or allocated to the AP as well.

For the same reasons, we suggest adding the phrase ",but may not" after "typically ends" and "typically starts", or replacing "typically" with "often", in Section 2.6.

Section 3.1 (Overview) – This section uses the undefined term "court order" twice, rather than the defined term "Domestic Relations Order (DRO)". Is this intended to be something broader than the defined DRO term? If so, some explanation would be helpful.

Section 3.2.2 (Disclose any Conflicts of Interest) – This section indicates that a potential conflict of interest exists if the enrolled actuary (EA) for a plan is retained on behalf of the participant, AP, court or judge. We do not believe this example is either appropriate or clear and request that it be deleted. For example, it is not clear what "retained on behalf of" means. If the plan sponsor asks the EA to split the benefit in accordance with a DRO, is that "on behalf of" the participant or AP (since it is for their benefit?). Or is it not on behalf of the participant or AP, because the EA was not retained directly by the participant or AP? The language in Section 3.2.3 suggests that being hired by the retirement plan to do calculations is not "being retained on behalf of" the participant or AP, so adding the same language to Section 3.2.2 would help.

In addition, assuming that a conflict of interest exists, we see no reason to single out EAs in the example – if a conflict of interest does exist it would also exist for an actuary for a public plan, who may not be an EA. It also is unclear whether any such conflict would extend to other members of the client's actuarial team who are not the plan's designated EA.

While this example could be made less problematic if it were modified to clarify that it does not apply with respect to DROs, we prefer that it be deleted. If it did not cover DROs, it would then apply only to an unusual circumstance, as the participant or AP would have to be directly hiring the plan's EA (since the disclosure of the conflict needs only to be made to "direct users," who are the people who hired the EA) without knowing they were doing so (or they would already know of the "conflict").

Section 3.3.3.a.1 (Selecting an Allocation Method – Direct Tracing) - This section applies when the actuary selects the allocation method (as opposed to when he or she is directed to use a particular allocation method), and suggests that one appropriate method is to apply direct tracing using vested benefits. We believe it would very often not be appropriate for an actuary to choose such a method, and believe that the standard should discuss the implications of the method and direct the actuary to consider whether it is appropriate. For example, in a nonqualified plan, an executive that works for 30 years but needs to be age 55 to be vested in a benefit, and gets married at 54 and divorced at 56, would have the entire benefit treated as an accrual while married under this method. A similar concern exists with early retirement cliffs in qualified plans, and with retiree medical benefits if this standard is expanded to cover retiree medical benefits. We do not believe this standard should suggest that this is an appropriate allocation method without more discussion of the implications and direction to the actuary to consider the appropriateness of this approach in the particular circumstances.

Section 3.3.4(c) (Actuarial Assumptions – Annuity Purchase) - It may be appropriate to narrow the discussion of replacing the interest rate and mortality assumption with an annuity purchase price to benefits already in pay status, or where the date and form of payment is known. Where there are contingent benefits (e.g., different available commencement dates, optional forms, contingent subsidies, etc.) it seems unlikely that the actuary could get suitable information. At the very least we believe this section should mention this issue as something for the actuary to consider before using annuity quotes.

Section 3.3.4.h (Compensation Scale) - – The example given where it would be reasonable to reflect assumed compensation increases is a very unusual situation where there would be little question that future compensation increases should be taken into account, since it is basically the same as a post termination cost of living adjustment that is part of the accrued benefit. It leaves the reader wondering whether that unusual example suggests somehow that the more typical situation - taking into account assumed future compensation increases while active (e.g., if valuing a prorata part of the ultimate expected benefit) - is not considered appropriate. We suggest that example be deleted.

Section 3.3.4.i (Actuarial Assumptions – Growth of Individual Account Balances) - This section indicates that whenever a return rate is needed to accumulate real or hypothetical balances (e.g., interest credit on a cash balance account, return on defined contribution (DC) assets that are part of a floor offset plan, etc.) the future assumed return should equal the discount rate "unless another assumption is clearly warranted". The discount rate is separately required (in Section 3.3.4.a) to be a low risk rate of return "unless another assumption is clearly warranted". This seems excessively prescriptive, and "clearly warranted" seems like an unreasonably high bar. For example, with the typical cash balance plan that uses one of the permitted bond indices for interest credits, we do not believe that the actuary should generally assume whatever was being used for the discount rate. Instead, we believe that the actuary should assume a best estimate of that index. In addition, Section 3.3.4.k doesn't require this approach for the assumed conversion of the account to an annuity, which seems analogous to setting interest credit assumptions for a cash balance plan with a non-investment based interest credit.

In addition, some floor offset designs in practice are not expected to provide any benefit to people who entered at young ages (because the associated DC account offset is expected to be more valuable than the gross DB benefit), but if the discount rate used is required to be a low-risk rate, and that rate is also required to be used as the assumed investment return, the actuary might then calculate an expected net DB benefit. While such an approach might be reasonable for a floor offset plan, we don't believe it is the only reasonable approach, and we don't believe the ASOP should suggest that a different approach, properly disclosed, violates the ASOP. In fact, in such situations the most useful approach for the parties to the DRO would be to perform calculations using a variety of assumed returns on the DC account used for the offset. In addition, with a floor offset design, it seems likely that there will be some recognition within the defined benefit plan DRO of whether, and the manner in which, the DC offset account is being divided and those circumstances may influence what is appropriate.

In any event, we believe the ASOP should clarify whether this Section 3.3.4.i is intended to apply only to actual investment returns credited to accounts (rather than, for example, bond indices), and that even with respect to actual investment returns, the section should not require the use of the discount rate, but rather should require consideration of whether the use of the discount rate is appropriate, and should recommend that the actuary consider providing results at different assumed returns. Appropriate disclosures regarding assumptions selected by the actuary and the rationale therefor are already required by Section 4.4.

Section 3.4.3 (Participating in Adversarial Proceedings – Participating in Negotiations with Another Expert) - We suggest replacing the words "irreconcilable positions" with "unreconciled positions", since the rest of the sentence suggests that the positions will ultimately be resolved.

Section 3.7 (Assisting in Reviewing or Implementing a Domestic Relations Order) – The opening paragraph of Section 3.7 discusses the types of review that an actuary might do of a DRO, including determining whether each party's benefit is definitely determinable from the order. This is typically the most problematical part of DROs, in that they often don't properly cover all contingencies. But the second paragraph of 3.7.1 (*Reviewing a Court Order*) provides that the actuary should disclose the scope of his or her review, and in doing so it focuses on conflicts between the DRO and the plan. It doesn't mention making sure benefits are definitely determinable as part of the scope of the DRO review. We believe making sure the benefits are definitely determinable from the plan document and DRO, and disclosing if they are not, should be explicitly mentioned here, as that is often the most critical aspect of the review, and will nearly always be within the scope of the actuary's review.

Section 4.3.d (General Disclosures – Name of Retirement Plan and Key Provisions) – This section requires that, when an actuary does a benefit calculation that involves determining the participant's or AP's benefits under a DRO, the communication must include "a summary of key provisions, or other relevant retirement plan information affecting . . .the division of the retirement plan benefit". This appears to require full disclosure of plan provisions when the actuary performs what is essentially a benefit calculation under the plan, even though that is not required for any other benefit calculation, plan participants already receive Summary Plan Descriptions (SPDs), and counsel for the participant and AP usually request and receive an SPD and/or plan document, along with the plan's DRO procedures, when the DRO is being drafted. We don't believe this summary of plan provisions should be required to be separately supplied by the actuary.

Section 4.4.d (Actuarial Valuation Results - Description of Actuarial Assumptions and Rationale for Non-Prescribed Assumptions) – If the split of benefits pursuant to a DRO is not excluded from the definition of Actuarial Valuation in Section 2.1, as discussed above, then this section should make clear that assumptions specified in the plan for DRO calculations are prescribed assumptions, so no rationale needs to be provided.

Thank you for this opportunity to comment on the Exposure Draft. If you have any questions concerning our comments, please contact either of us directly.

Sincerely,

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