

Appendix 2

Comments on the Exposure Draft and Responses

The exposure draft of proposed ASOP, *Determining Minimum Value and Actuarial Value under the Affordable Care Act*, was issued in December 2014 with a comment deadline of May 1, 2015. Fourteen 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 Task Force on Actuarial Value/Minimum Value under the Affordable Care Act and the Health Committee of the Actuarial Standards Board carefully considered all comments received, and the Health Committee and ASB reviewed (and modified, where appropriate) the changes proposed by the task force.

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

The term “reviewers” in appendix 2 includes the Task Force, the Health 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	One commentator suggested providing a “crosswalk map” that would allow the MV calculator (MVC) to become significantly more useful for the detailed benefits of each acceptable EHB standard into the row categories of the MVC.
Response	The reviewers believe this is beyond the scope of the standard and made no change.
Comment	One commentator suggested that the ASOP should add a discussion regarding how regulators define the term “substantial” when referring to inpatient hospitalization and physician services.
Response	The reviewers believe interpreting the regulations is beyond the scope of the standard. Therefore, no change was made.
Comment	One commentator suggested separate ASOPs for AV and MV be considered.
Response	The reviewers believe that the coverage of these related topics in a single ASOP is appropriate and made no change.
Comment	Several commentators believed in-network cost sharing and tiered networks should be specifically discussed in this ASOP.
Response	The reviewers believe that specific non-standard benefits are beyond the scope of the ASOP and made no change.
Comment	Several commentators suggested the ASOP should provide guidance about the MV calculation by describing the responsibilities of the actuary to include awareness of and compliance with all applicable regulations associated with the required covered services.
Response	The reviewers note that the <i>Code of Professional Conduct</i> (the Code) requires that “an actuary must be familiar with, and keep current with, not only the Code but also applicable law and rules of professional conduct for the jurisdictions in which the actuary renders actuarial services.” Therefore, no change was made.
Comment	One commentator suggested that health insurance plans use an alternative method under 45

Response	<p>CFR 156.135(b) that requires certification by an actuary only in specific cases where the health insurance plan's design isn't compatible with the AV calculator (AVC). The commentator also suggested the ASB consider the guidance the CMS has issued and reference all such sources of guidance and instructions in the final draft of the ASOP.</p> <p>The reviewers believe the standard contains appropriate references to the requirements and made no change.</p>
TRANSMITTAL MEMORANDUM	
1. Does this ASOP provide appropriate guidance to actuaries who are determining actuarial values for purposes of meeting the various ACA AV and MV requirements?	
Comment	One commentator indicated that there were some clarity issues associated with the use of the term "specific population" in section 2.1 and with the definition of health insurance plan in section 2.5.
Response	The reviewers believe the ASOP is clear and made no change.
Comment	Another commentator suggested adding the specification that a plan with an aggregate family deductible is a non-standard plan design and that the actuary should consider this fact in determining whether a plan meets the MV standard and requirement.
Response	The reviewers believe the ASOP provides guidance for handling non-standard plan design, in general, which actuaries can apply to specific situations and, therefore, made no change.
Comment	One commentator suggested consideration of whether the ASOP should address an actuary's obligations for ensuring that each plan is administered exactly how the plan was evaluated.
Response	The reviewers believe that validating the administration of plan design was outside the scope of this ASOP and made no change.
Comment	One commentator suggested guidance be provided regarding evaluation of certain plans that are substantially missing coverage categories.
Response	The reviewers believe the ASOP provides guidance for handling non-standard plan design, in general, which actuaries can apply to specific situations and, therefore, made no change.
2. Is the ASOP clear that it applies only to the calculation of actuarial value as required by the ACA, and not to other uses and determinations of actuarial value?	
Comment	Citing section 1.1, Purpose, section 1.2, Scope, and the draft as a whole, all commentators believed the purpose of the ASOP to be clear.
Response	The reviewers agree.
3. Do the descriptors AVC-AV and MVC-AV in sections [2.3] and [2.8] add clarity to the ASOP? We note that the American Academy of Actuaries' practice note uses the terms "Metal AV" and "MV" for these two values.	
Comment	The majority of commentators believed that the descriptors AVC-AV and MVC-AV are clear and add clarity to the ASOP.
Response	The reviewers agree.
Comment	One commentator stated that the definitions for AVC-AV and MVC-AV consider future changes and broadened functionality.
Response	The reviewers believe the language is sufficiently broad to account for future changes and made no change.
4. Is the guidance of the ASOP sufficient for situations where the actuary does not agree with the determination of the AV made by the AV or MV calculator?	
Comment	The majority of the commentators agreed that the guidance of the ASOP is sufficient for situations of disagreement with the determination of the AV made by the calculators.
Response	The reviewers agree.

Comment	Commentators suggested that alternative language be used in section 3.6 where the exposure draft states that “the actuary should consider documenting....” The commentators suggested that this be written as follows: “the actuary should document...”
Response	The reviewers agree and made the suggested change.
Comment	One commentator stated that in circumstances where an actuary does not agree with another actuary’s work in regards to metal level compliance (AVC-AV), or the pass/fail opinion for AVCMV evaluations, timely notification is desirable.
Response	The reviewers believe ASOP No. 41, <i>Actuarial Communications</i> , and the Code adequately address issues of communication and professional courtesy, and made no change.
5. Should the title of this proposed ASOP be changed to be more specific regarding testing of minimum values? If so, what change should be made?	
Comment	Nearly all commentators believed no change was needed in regards to the title of the ASOP. One commentator suggested the title be changed to “Determining Actuarial Value and Testing Minimum Value Requirements of the Affordable Care Act.”
Response	The reviewers agree that the suggested alternative title would also be appropriate but opted not to make a change.
6. Is the detail proposed for a certification in section 4 appropriate? Should additional items be added?	
Comment	Most commentators believed the detail for certification in section 4 is appropriate. Several commentators also desired the certification be accompanied by documentation in the plan filing, along with a summary of the plan design.
Response	The reviewers believe the current language, when considered in concert with ASOP No. 41 provides appropriate guidance. Therefore, no change was made.
Comment	One commentator suggested that the ASOP should require an actuarial certification of both the AVC and the MVC, with such certification including appropriate disclosures as required by ASOP No. 23, <i>Data Quality</i> , as well as specific disclosures on the testing of any specific implementations such as the Excel spreadsheet provided by HHS currently.
Response	The reviewers believe development and testing of the AVC and MVC is outside of the scope of this ASOP and made no change.
Comment	One commentator believed that the ASOP should make it clear when either an AV or MV calculation is necessary.
Response	The reviewers believe the ASOP is clear, and note that Federal and State regulations will determine when an MV or AV calculation is necessary. Therefore, no change was made.
Comment	One commentator requested consideration of all plan design elements, not only those captured within the MVC and AVC.
Response	The reviewers believe the ASOP provides guidance for handling non-standard plan design, in general, which actuaries can apply to specific situations and, therefore, made no change.
SECTION 1. PURPOSE, SCOPE, CROSS REFERENCES, AND EFFECTIVE DATE	
Section 1.2, Scope	
Comment	Several commentators suggested that the adjective “large” when referring to employer size was not necessary. In addition, one commentator recommended more inclusive language and clarity towards listing self-insured health insurance plans without reference to “size.”
Response	The reviewers agree and made the change.
Comment	One commentator requested additional guidance for self-insured small group cases and clarification of whether the MVC or AVC should be used for groups that self-insure.
Response	The reviewers believe the ASOP is clear, and note that Federal and State regulations will determine when an AV or MV calculation is necessary. Therefore, no change was made.

Comment	Several commentators recommended that the scope be expanded to include the development and documentation of the actuarial calculators.
Response	The reviewers believe the development, documentation, and testing of the AVC and MVC is outside of the scope of this ASOP and made no change.
SECTION 2. DEFINITIONS	
Section 2.1, Actuarial Value (AV)	
Comment	Two commentators noted that the AV is required to be computed for a standard population and not the population of a specific plan. The use of “specified population” in this section may imply that the AV may change based on the population of a plan which is not the intent of the statute.
Response	The reviewers disagree and made no change. Section 2.1 is meant to be a general definition of “actuarial value.”
Section 2.2, AV Calculator (AVC)	
Comment	Due to possible change in the future, one commentator believed that the AVC should be defined as the data and methodology released by HHS to determine the AV of a plan, as required by current regulation.
Response	The reviewers agree and made the change.
Section 2.3, AVC-AV	
Comment	Several commentators suggested the modification that “actuarial value” be capitalized in this section.
Response	The reviewers agree but substituted the acronym “AV” that was established in section 2.1.
Section 2.5, Health Insurance Plan	
Comment	One commentator believed that the definition of “health insurance plan” is too broad and its application would include specific excepted benefits plans under Federal Regulations even though they are not subject to AV or MV calculations.
Response	The reviewers believe section 1.2, Scope, addresses this issue and made no change.
Section 2.7, MV Calculator (MVC)	
Comment	One commentator suggested that the definition be limited to data and methodology released by HHS rather than the specific Excel implementation.
Response	The reviewers agree and made the change.
Section 2.8, MVC-AV	
Comment	Similarly to section 2.3, several commentators suggested that “actuarial value” be capitalized.
Response	The reviewers agree but substituted the acronym “AV.”
SECTION 3. ANALYSIS OF ISSUES AND RECOMMENDED PRACTICES	
Comment	Several commentators requested an additional item in section 3 referencing materiality, such as stating that the setting of assumptions or evaluation of plan design attributes should consider their materiality in light of the purpose of the assignment.
Response	The reviewers note that ASOP No. 1, <i>Introductory Actuarial Standard of Practice</i> , section 2.6, states that “when evaluating materiality, the actuary should consider the purposes of the actuary’s work and how the actuary anticipates it will be used by intended users...The guidance in ASOPs need not be applied to immaterial items.” The reviewers believe this guidance appropriately covers “materiality,” and therefore made no change.
Section 3.1, Use of AV or MV Calculator	
Comment	One commentator suggested that the ASOP should make clear that, in the event safe harbor requirements were met for an MV determination, an actuary is not required to be involved with the determination and calculation of the MV.

Response	The reviewers agree and added clarifying language.
Comment	Several commentators believed that the term “affordable insurance exchanges” isn’t widely used and suggested alternate language.
Response	The reviewers deleted the “affordable insurance exchanges” language from this section, as it was not needed.
Comment	Several commentators suggested that “Except as noted in 3.2” and “Except as noted in 3.3” be added to the section.
Response	The reviewers believe that because sections 3.2 and 3.3 are titled “Exceptions to the AVC” and “Exceptions to the MVC,” respectively, that it is clear that there are exceptions. Therefore, no change was made.
Comment	One commentator recommended that the ASOP provide more guidance on what approaches might be appropriate to normalize data to a consistent population for use in making adjustments to either the input or output from the calculators.
Response	The reviewers believe that providing specific guidance for normalizing the data is beyond the scope of this ASOP and made no change.
Comment	One commentator suggested that the sentence “The actuary should use the appropriate calculator when calculating the actuarial value” be modified to “The actuary should use the appropriate calculator for the appropriate plan year when calculating the actuarial value.”
Response	The reviewers believe the language is clear regarding the choice of appropriate calculator and made no change.
Section 3.4, Evaluating Non-Standard Plan Designs	
Comment	Several commentators observed that the AVC and MVC don’t anticipate all plan designs.
Response	The reviewers agree but believe the standard provides appropriate guidance regarding the evaluation of non-standard plan designs.
Section 3.5, Reasonableness of Assumptions for Non-Standard Plan Designs	
Comment	One commentator suggested adding a comment regarding materiality to the section. The commentator specifically suggested altering the second sentence to read “These assumptions should be reasonable in relation to the materiality of the assumption on the plan’s AV or MV.”
Response	The reviewers believe the current language is appropriate and made no change. For additional information on materiality, see ASOP No. 1, section 2.6.
Section 3.6, Unreasonable Results	
Comment	Several commentators stated that the use of the term “AV” in this section is confusing and suggested that AV be spelled out as “actuarial value” in order to avoid association with AV and MV calculations.
Response	The reviewers believe the current language is appropriate since AVC-AV and MVC-MV are defined, and made no change.
Comment	One commentator recommended that in order to strengthen the guidance in this section, the words “considering documenting” should be replaced with “document” in both cases it arises.
Response	The reviewers agree and made the change.
Comment	One commentator suggested modifying the paragraph to read “In some circumstances, the AVC or MVC may, in the actuary’s professional judgment, produce unreasonable results. In such cases, the actuary may make adjustments in addition to the stated options in section 3.2 and 3.3 for plan design attributes. The actuary may use what they have deemed unreasonable results if required to do so by regulators.” The commentator also stated that the last two paragraphs of section 3.6 were redundant.

Response	The reviewers believe the current language is appropriate in light of the regulatory requirements. Sections 3.2 and 3.3 already cover allowable adjustments for non-standard plan designs. The reviewers note that the last two paragraphs in section 3.6 address unreasonable results before and after applying such allowable adjustments, respectively. Therefore, no changes were made.
Comment	One commentator recommended modifying the sentence “The actuary may use unreasonable results if required to do so by regulators” to “The actuary should make adjustments to inputs/outputs if the results are unreasonable unless required not to do so by regulators.”
Response	The reviewers note that sections 3.2 and 3.3 cover allowable adjustments for non-standard plan designs and made no change.
Section 3.7, Documentation	
Comment	One commentator suggested that the ASB consider whether section 3.7 applies also to actuaries involved with the development of the AV and MV calculators.
Response	The reviewers believe that the development of the AVC and MVC by regulators is outside the scope of this ASOP, and made no change.
SECTION 4. COMMUNICATIONS AND DISCLOSURES	
Section 4.1, Actuarial Certifications	
Comment	One commentator suggested including a sentence in this section that reflects that separate actuarial reports need not be created, if such documentation is included in another report.
Response	The reviewers believe that the definition of “actuarial report” in ASOP No. 41 is sufficiently broad to allow for a scenario where a separate report is not needed. Therefore, no change was made.
Comment	One commentator stated that based upon requirements by law for actuaries to use the AVC/MVC, an actuarial certification should indicate a reliance on a regulatory tool. The commentator recommended the use of language that clarifies that the actuary is certifying the numbers based on the calculator and not the calculator itself.
Response	The reviewers believe that given that the law requires the use of the calculators and the narrow scope of this ASOP, that such a reliance statement should not be required. The reviewers also note that the guidance does not preclude making such a reliance statement. Therefore, no change was made.
Section 4.2, Other Communications and Disclosures	
Comment	Several commentators suggested that this section should contain the following statement, “The actuary should indicate the data that was used and its source (for example, HHS or state data) to calculate adjustments to the calculator results, the rationale for using the data, and how it was used to calculate the adjustments.”
Response	The reviewers broadened the language to provide guidance that the actuary should identify the data used and its source.
APPENDIX	
Comment	One commentator recommended that language in the “Current Practices” section be strengthened to read, “The actuarial value calculated with the AVC and MVC is likely to differ from actuarial values that may be used in pricing...”
Response	The reviewers believe the current language indicating the AVC and MVC may differ from pricing AVs is appropriate. The reviewers note that the “Current Practices” section identifies reasons why the actuarial values calculated with the AVC and MVC could differ from an actuarial value used for pricing. Therefore, no change was made.
