Comment #2– 1/14/19 – 7:40 p.m.

Actuarial Standards Board:

The purpose of this email is to provide you with my comments and suggestions concerning your exposure draft of the latest revision of ASOP No. 32, *Social Insurance*. The comments and suggestions that follow are mine alone, and are not necessarily reflective of my employer nor of any organization of which I am a member.

I do wish to support and endorse the comments and suggestions sent to you by Ken Steiner on October 26, 2018.

Turning first to the Request for Comments section of your Transmittal Memorandum:

1. I agree with the decision to not cover Medicaid under the standard, on the grounds that it is a public assistance program, and not insurance.
2. I disagree with the decision to not cover unemployment insurance programs under the standard, on grounds that are set forth below.
3. I disagree with the scope of the standard, and more specifically with sub-items a, b, and c of this list, also on grounds that are set forth below.

I turn next to the definition of Social Insurance, which is discussed almost entirely in the Appendix, which is stated to be not a part of the standard itself. While social insurance is not directly defined in the proposed standard, we do learn in Section 2.9 that a Social Insurance Program is "a program for which this standard applies as described in section 1.2", which in turn defines a Social Insurance Program as a program that has seven characteristics, some of which belong in such a definition, but most of which are arbitrary and subjective, seemingly designed to serve as a foundation for a predetermined list of programs that are, or are not, to be covered by the proposed standard. In other words, exactly what Humpty Dumpty meant when he said to Alice, in rather a scornful tone, "when *I* use a word, it means just what I choose it to mean – neither more nor less".

Consider my charge of subjectivity in the Scope section of the proposed standard, which has been lodged by many actuaries and others over the years with regard to the much more precise *enacted* standards, but which nonetheless requires support:

- Such actuaries should follow the guidance *to the extent practicable* [which means what I choose it to mean].
- Explicit accountability … is *usually* provided in the form of a trust fund [unless it isn't].
- participation is universally (or *almost universally*) compulsory [except for exceptions, such as Congress].
- the *vast* majority of the population eligible to participate, *does participate* [which rules out actuarial analysis until "enough" experience accrues].
- *However* (d), *usually* (e), *solely* (g) – [see previous bullets].

Such a convoluted and indirect definition of social insurance does not provide a solid foundation for a profession-wide standard of practice purporting to guide actuaries who analyze social insurance programs (a much larger group than those specified in the proposed standard). Nor are direct and succinct definitions of social insurance particularly elusive; they are to be found in actuarial and other literature extending over many years. Within our own profession, the Casualty Actuarial Society has the richest history, presumably because it was founded contemporaneously with the introduction of workers compensation, the original US line of social insurance. The founder of the CAS, Dr. Isaac Rubinow, was the leading social insurance expert of his time, and the CAS Proceedings reflected that leadership for many years. The early Proceedings included verbatim the examination questions of the prior year, *all* of which specifically asked the applicant to define social insurance, and one of which asked him or her to "estimate the total annual cost of a bill providing for compulsory health insurance and for the equal division of cost between employees and employers". The chairman of the examination committee during those years later (1942) entitled his Presidential address "Casualty Actuaries and Social Insurance", as did an even later (1983) CAS President ("Social Insurance and the Casualty Actuary"); both addresses effectively defined social insurance to be "insurance that is required or provided by the government".

I turn next to those social insurance programs that are specifically excluded from coverage under the proposed standard:

- **unemployment insurance** – The reason given for this omission is that actuaries have not been providing professional services for unemployment insurance programs, which is incorrect. Among many other actuaries over many years, Dr. Rubinow and I have each provided professional actuarial services for unemployment insurance to the State of Ohio.
- **The Affordable Care Act** – The reason given for this omission is that risk adjustment programs such as the ACA are subject to ASOP No. 45. I believe I understand the meaning of all the words in the proposed standard, but find their combination in the subject reason to be incomprehensible. In any event, the ACA is clearly social insurance under any reasonable definition of the term.
- **workers compensation insurance** – The National Academy of Social Insurance, of which I am a Charter Member, includes workers compensation squarely within its covered lines of social insurance. Essentially all States *require* employers to provide workers compensation insurance and perhaps a dozen or so States *provide* the coverage themselves. Workers compensation has long been considered the original line of US social insurance.
- **State-mandated disability income and unemployment insurance** – The reason given for these omissions is again that actuaries have not been providing professional services for these programs, which again is incorrect. For example, for a number of years I provided comprehensive actuarial services to the State of California for its disability income and unemployment insurance programs.

I will close this tome with a probably-lengthy list of random observations and comments about the proposed standard:

- **<u>10-item list in the Appendix</u>** – I believe that this list, which begins with "Medicaid" and ends with "federal flood insurance", and which excludes the listed programs on the grounds that they are not social insurance, is entirely appropriate.
- **<u>CSITARIAn bullets</u>** – I am concerned about your decision to exclude a sentence from the CSITARIA definition of social insurance that states "There is a definite plan for financing the benefits that is designed to be adequate in terms of long-range considerations", but more so by justification of the decision on the grounds that some covered programs have statutory tax rates that are inadequate for long-term solvency.
- **<u>3.2 Coverage and Program Features</u>** – An example of the legislation referred to in this section was the so-called doc-fix, under which the infeasible doctor reimbursement rates in the program were "corrected" annually by Congress. The only plausible explanation for this scheme was to mislead the public by understating the apparent cost of the program. The affected actuaries managed to resolve their ethical dilemma by following the unethical law, and the inadequate standards of their profession, while including in their report a link to an "alternative scenario" based on actuarial science. The proposed standard at hand provides a degree of cover for these affected actuaries, which is a considerable improvement over the status quo ante. Far better would be a standard of practice that encourages or requires the actuary to alert the public as to the scheme at hand.
- **<u>3.4.3b behavioral changes</u>** – I'm encouraged to see this provision in the proposed standard for several reasons, one of which is that actuaries are particularly well-qualified to understand and quantify the often-profound impact of behavioral changes on projected statistical data (consider "anti-selection" in this connection). For example, will not social insurance projections, along with the size of the workforce, be seriously affected when and if a large number of those eligible for public benefits can receive more money from those sources than from available employment?
- **<u>3.5 infinite horizons</u>** – Disparagement of infinite horizon analysis has no place in an actuarial standard of practice, especially when that standard concerns programs that are sold to the public as being permanent and sustainable. Consider Social Security in this connection. The 2018 Trustees' Report develops present-value unfunded obligations of $34 trillion using an infinite valuation period, and yet only $13 trillion using an arbitrary 75-year valuation period. The $21 trillion differential is a real if deferred and unreported burden on those expecting benefits after the end of the valuation period. The argument that the cost of those benefits is uncertain applies to all actuarial estimations, and is recognized in the discounting used in present value calculations. The actuary who is generally "credited" with the 75-year valuation period told me that he was of course an infinite horizon guy, and that he put forth 75 years as a compromise position with much lower and worse alternative valuation periods. About 20 years ago I listened to another social insurance lion promote reducing the 75-year valuation period to 50 years, after which I was tempted to tell my then-seven-year-old daughter that Social Security was about to be saved – but only for appearances, and not for her.
- **<u>1.1 Purpose of the proposed standard</u>** – This is said to be to provide guidance to actuaries when performing actuarial services for or on behalf of Social Insurance Programs. Thus, the proposed standard does not apply to actuaries analyzing such programs for or on behalf of the public, which it should. It also would not apply to the private think tank that recently estimated the ten-year cost of the proposed Medicare-For-All program to be some $30 trillion. It would not have applied anyway, admittedly, to the author of that well-supported analysis, who is a social insurance expert economist, but it should apply to some actuary who should perform such analysis, preferably for a much longer valuation period than ten years.

- **1.2b contributions and trust funds** – Actuaries working on social insurance (and other) programs should be encouraged to avoid euphemisms such as contributions (for taxes and premiums) and trust funds (for contingency reserves that are loaned to Congress to spend as it wishes, while avoiding charges of deficit spending). If such euphemisms or worse are embedded in the law, as is often the case, the actuary should not give them tacit approval, since his or her ultimate obligation is to the public. Consider, for example, Section 1.2e of the proposed standard, which is clearly inconsistent with the understandable belief of millions that their Social Security contributions are held in a trust fund to secure the benefits set forth in their account.
- **2.2 Financial Adequacy** – Suppose a Medicare-For-All law is passed which includes an appropriation of $30 trillion (this is a hypothetical!) to establish a funded trust fund. Suppose further that the think tank estimate discussed above is accurate. The program would then be financially adequate under the proposed standard if projected for a specified period of time of ten years, but woefully inadequate by any longer measure.
- **3.4.3e bankruptcy** – It's appropriate that the proposed standard should encourage actuaries to consider prospective bankruptcies among employers, both private and public. They should also consider financial failures among the underwriters of social insurance programs, including governments. To the argument that this applies only to state and local governments, but not to the federal government because it can print unlimited amounts of money, consider first the fate of governments around the world who have done just that. Perhaps the social insurance actuary should be encouraged to perform holistic cash flow analysis, to determine whether the federal government can reasonably be expected to meet all the cash demands on it, from the program at hand and all others, for an extended period of time into the future. For if the government fails, so does the subject program.
- **3.4.4 inadequate data** – The proposed standard wants the actuary to consider postponing analysis until sufficient experience and specific data becomes available. This sounds reasonable, but history shows that programs will then be put forth without any analysis or, worse, with incompetent or biased analysis, leaving the actuary to pick up the pieces when the data finally comes in. Far better would be to encourage the actuary to provide the analysis using surrogate data and unbiased analysis. For example, nearly half-a-century ago, no-fault auto insurance was proposed at both the federal and state levels, and actuarial expert testimony was generally effective in informing legislators of the expected costs of the proposed programs.
- **3.5 inadequate long-range projections** - The proposed standard states that the actuary should consider using only short-range projections when long-range projections are deemed inadequate. This is reasonable provided the actuary's report makes it clear that the short-range projection should not be used for long-term purposes. Consider, for example, the $30 trillion cost ten-year projection above, or the use of a 75-year projection to evaluate a purportedly permanent program.
- **3.8 Tests of Financial Adequacy** - The first question is when would a test of the financial adequacy of a social insurance be *in*appropriate? The next is why an actuary would decline to do long-range analysis because the program is susceptible to uncertain contingent events. If only the short-range analysis is done, however, the paragraph immediately above should be consulted.
- **3.9 Assessment of Sustainability** – I believe it appropriate for the social insurance actuary to project and examine annual ratios of program income and cost to GDP, as set forth in subsection "a", provided the long-range period is long enough to draw meaningful conclusions about sustainability, and provided that holistic studies of total federal commitments to all programs indicate that federal resources can reasonably be expected to be available to meet federal commitments to the program at hand.

- **4.1d2 anticipated changes** – Consider the circumstance under which same-sex partners were legally married under the laws of a given State, yet denied Social Security benefits under then-current federal law. Suppose the actuary for good reason believes that the US Supreme Court will soon require Social Security law to be changed to provide married same-sex partners the same benefits as married different-sex partners - but that that has not occurred as of the valuation date. My reading of the pertinent sections of the Code of Professional Conduct, including the ASOPs; along with my understanding of pertinent federal law; leads me to conclude that the valuation actuary must value the subject benefits (married same-sex partners' Social Security benefits) at zero – even though that estimate is well below his or her best estimate of that value – but then must disclose this issue in subsequent communications (in accordance with subsection 4.1d2). Note that this discussion applies as well to the much-larger doc-fix issue addressed in the third bullet in this list. Am I off-base in this analysis, or is this a matter of concern in the proposed standard?
- **4.1.e2 future uncertainty** – This communications requirement seems to be directed at the infinite horizon issue, but should it not apply equally to valuation periods that are deemed to be too short rather than too long? Consider in this connection the former one-year valuation period, if I recall correctly, for the reserve needed for Medicare Part B benefits.

I believe the foregoing to be a reasonably thorough statement of my comments and suggestions concerning the proposed Social Insurance standard of practice. I truly appreciate the opportunity to put this statement before you and I thank you for enduring its length while getting at its substance. I stand ready to discuss ASOP No. 32 further with you or your designee, in person or otherwise.

Fred Kilbourne