

**Comment #1 - 11/3/20 – 9:02 p.m.**

Actuarial Standards Board,

Following are comments related to ASOP No. 2 – Nonguaranteed Charges or Benefits for Life Insurance Policies and Annuity Contracts.

I am submitting these comments on my own behalf. The opinions contained in this document are my own and do not necessarily reflect the opinion of my employer or its employees.

The Second Exposure Draft of ASOP 2 (“Draft ASOP”) remains more prescriptive and limiting of the ability for an actuary to recommend changes to Non-Guaranteed Elements (“NGEs”) than the existing ASOP 2. While some of the prescriptive requirements in the original draft of revised ASOP 2 have been made a bit more flexible in the Draft ASOP, I continue to believe that, in several instances, the Draft ASOP is venturing into areas best handled by regulation rather than by an actuarial standard of practice.

**Key Concerns**

In situations where there is no applicable statute or regulation, the actuary should be able to use appropriate professional judgment in determining NGEs, taking into account the relevant contractual language and the pertinent legal, regulatory, and competitive environments, rather than being tied to an ASOP creating required practices that may have unintended consequences.

The Draft ASOP should neither create regulatory obligations regarding NGEs nor override contractual provisions related to determining NGEs. The prescriptive requirements in the Draft ASOP put actuaries and their principals/companies at risk of meritless scrutiny. As currently drafted, this ASOP will have a variety of unintended, detrimental consequences.

**More specific comments:**

1. The following three sections contain language that is very prescriptive and “regulatory” in nature:
  - a. Section 3.2(a) states, “NGE scales are determined with the expectation that they will be revised only if anticipated experience factors have changed since issue, or alternatively, since the previous revision.”
  - b. Section 3.4.1(c) states, “that NGE scales are determined with the expectation that they will not be revised unless the anticipated experience factors change.”
  - c. Section 3.4.2.4 states, “When determining revised NGE scales, the actuary . . . should a. identify, under the terms of the policy and applicable law, the anticipated experience factors that may be used when revising NGE scales; b. base the revision of the NGE scales on changes in the anticipated experience factors identified in (a) above.”

As illustrated by the examples below, there are numerous issues with 3.2(a), 3.4.1(c), and 3.4.2.4(c) when applied to establishing credited interest rates or index parameters, the ability to lower post-level term rates, and likely other examples. Each section should be removed. Alternatively, each section could be rewritten to include “if required by statute or regulation”. Here are examples of common situations where this language is problematic:

- Credited interest rates and index parameters: Many companies establish crediting rates and index parameters (such as interest rate caps) based on the return of a portfolio of underlying assets. However, at any given time, a company is likely to have a view of “anticipated experience” that the portfolio returns will be falling into the future (or, someday perhaps, increasing). The Draft ASOP would require that credited rates and index parameters remain unchanged unless there is an updated view of “anticipated experience”, even if the prior view was that rates would be falling into the future. This is probably not the intention of the drafters of the Draft ASOP, but this would limit the ability to adjust credited interest rates and index parameters in ways most actuaries would consider appropriate.
- Post-level term premiums: Many companies have lowered post-level term premiums to retain more policyholders past the end of the level term period and lower the mortality rate on the remaining post-level term block. This is favorable for both policyholders (premiums are lower) and companies (increased persistency). However, it seems like this relatively common change to indeterminate premiums would not be permitted under the Draft ASOP language. Sections 3.2(a) and 3.4.1(c) would require that initial premium rates are determined with the “expectation that they will be revised only if anticipated experience factors have changed”, and section 3.4.2.4(b) would require that post-level term premiums be revised “only if anticipated experience factors have changed”.
- Changes not based on experience factors: There may be other legitimate reasons for changing an NGE even if the underlying anticipated experience factors have not changed. Many actuaries might consider a change in tax rates or a change in reserve or regulatory capital requirements, or solvency concerns an appropriate reason to change an NGE, if not precluded by contract language, statute, or regulation. These items are not “experience factors” in the normal sense; would they be considered “experience factors” for purposes of establishing NGEs under the Draft ASOP?
  2. Section 3.2(b) states, “NGE scales are determined based on reasonable expectations of future experience and are not determined with the objective of recouping past losses or distributing past gains.” The phrase “recouping past losses or distributing past gains” is not well-defined; many possible definitions of “recouping past losses” and “distributing past gains” could be derived. There are likely circumstances where it would be appropriate to change NGEs, but some might consider the change to be “recouping past losses”; without a clear definition, any change in NGE could possibly be considered as “recouping past losses”. The undefined term “recouping past losses” in the Draft ASOP creates unnecessary risk for actuaries and their principals.

For example, a company releasing asset adequacy reserves as a result of a change to NGE may be considered by some as “recouping past losses”, although I don’t believe it should be so considered. As another example, the competitive landscape could change in a way that a company would want to lower inforce policy charges or narrow target spreads (e.g., if there was an unprecedented change in interest rates), beyond what is in the NGE framework, to prevent disintermediation (and potential solvency risk for the company). Would that be acceptable under the Draft ASOP?

To address this concern, I recommend removing any discussion of “recouping past losses” and “distributing past gains” from the Draft ASOP. Alternatively, Section 3.2(b) could be changed to

“NGE scales are determined based on reasonable expectations of future experience and, if required by statute or regulation, are not determined with the objective of recouping past losses or distributing past gains.”

3. Section 3.4.1 states, “When determining NGE scales for future sales of a new or existing product, the actuary should take into account the following: . . .” However, not all items in the list are always applicable, so the phrase “if applicable” should be added after “following”.

In summary, the Draft ASOP is venturing into areas best handled by regulation (rather than an actuarial standard of practice) and is creating prescriptive requirements for setting NGEs that may put actuaries and their principals/companies at risk of meritless scrutiny. The Draft ASOP would not prevent a company from setting NGEs in a manner consistent with regulation, statute, and contract language, but inconsistent with the required actuarial recommendations created by the Draft ASOP. Regulation or legislation would have the ability to prevent such NGEs and is the appropriate approach to implementing these types of public policy objectives.

The previously proposed revisions to language would avoid these issues.

Thank you for your efforts; the ASB work is valuable, and the ASOPs are very important to the profession.

Stephen P. Blaske, FSA, MAAA, Chief Actuary

**Steve Blaske, FSA, MAAA**  
S.V.P. & Chief Actuary

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