## Appendix 2

## Comments on the Second Exposure Draft and Responses

The second exposure draft of this ASOP, *Nonguaranteed Elements for Life Insurance and Annuity Products,* was issued in July 2020 with a comment deadline of November 13, 2020. Seven 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 ASOP No. 2 Task Force carefully considered all comments received, reviewed the exposure draft, and proposed changes. The ASB Life Committee and the ASB reviewed the proposed changes and made modifications where appropriate.

Summarized below are the significant issues and questions contained in the comment letters and the responses. Minor wording or punctuation changes that were suggested but not significant are not reflected in this appendix, although they may have been adopted.

The term "reviewers" in appendix 2 includes the ASOP No. 2 Task Force, the ASB Life Committee, and the ASB. Also, unless otherwise noted, the section numbers and titles used in appendix 2 refer to those in the second exposure draft.

| **GENERAL COMMENTS** | |
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| Comment | One commentator suggested defining "take into account" because it is unclear how it differs from "consider" or "reflect." |
| Response | The reviewers do not believe "take into account" or "reflect" require definitions that differ from the ordinary English definitions. Note that the term "should consider" is discussed in ASOP No. 1, *Introductory Standard of Practice*. ASOP No. 1 states,<br><br>> The terms "must" and "should" are generally followed by a verb or phrase denoting action(s), such as "disclose," "document," "consider," or "take into account." For example, the phrase "should consider" is often used to suggest potential courses of action. If, after consideration, in the actuary's professional judgment an action is not appropriate, the action is not required and failure to take this action is not a deviation from the guidance in the standard.<br><br>Therefore, the reviewers made no change in response to this comment. |
| Comment | One commentator requested that the ASOP be reviewed for applicability to annuities. |
| Response | The reviewers note that section 1.2 describes which annuities are in scope and added examples applicable to both life and annuities throughout the ASOP. |
| Comment | One commentator suggested differentiating between routine NGE changes and more complex NGE changes. |
| Response | The reviewers clarified the language in section 3.4.2.4 in response to this comment. |
| Comment | One commentator requested more guidance on the initial determination. |
| Response | The reviewers believe the guidance is appropriate and made no change in response to this comment. |

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| Comment | One commentator said that it is unclear whether the actuary can improve an NGE or reverse an increase without the full analysis described in the ASOP. |
| Response | The reviewers believe the guidance is appropriate and made no change in response to this comment. |
| Comment | One commentator was concerned that the ASOP poses limitations on alternative rate-setting processes, such as following an established plan (such as tracking an index or market rates). |
| Response | The reviewers disagree and made no change in response to this comment. |
| Comment | One commentator said that the ASOP was written for a consultant and not a company actuary. |
| Response | The reviewers believe the guidance is appropriate and made no change in response to this comment. |
| **SECTION 1. PURPOSE, SCOPE, CROSS REFERENCES, AND EFFECTIVE DATE** | |
| **Section 1.2, Scope** | |
| Comment | One commentator suggested adding language to clarify that the ASOP is not retroactively applicable to prior determinations before the effective date of the ASOP. |
| Response | The reviewers clarified the language. |
| Comment | One commentator suggested moving the sentence "Throughout this standard, the term determination includes both initial determination and subsequent redeterminations" to section 1.1. |
| Response | The reviewers disagree and made no change in response to this comment. |
| Comment | One commentator suggested adding "to the extent possible" when referring to future determinations of in-force products after the effective date to provide sufficient flexibility. |
| Response | The reviewers believe the guidance is appropriate and made no change in response to this comment. |
| Comment | One commentator noted that ASOP No. 15, *Dividends for Individual Participating Life Insurance, Annuities, and Disability Insurance*, does not appear to define "dividend" and suggested adding a definition to ASOP No. 2. |
| Response | The reviewers disagree with the suggestion and made no change in response to this comment. The reviewers note that section 2.4 states "For the purpose of this ASOP, an NGE reflects expectations of future experience as opposed to, for example, a dividend, which reflects participation in past experience." |
| **Section 1.4, Effective Date** | |
| Comment | One commentator suggested an effective date six months after approval by the ASB. |
| Response | The reviewers note the effective date is April 1, 2022. |
| **SECTION 2. DEFINITIONS** | |
| **Section 2.1, Anticipated Experience Factor** | |
| Comment | One commentator suggested adding "may include but are not limited to" before the list of examples. |
| Response | The reviewers note that examples are illustrative, not exhaustive, and made no change. |

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| Comment | One commentator suggested clarifying whether "rates of" applies to investment income only or the entire list. |
| Response | The reviewers believe the language is appropriate and made no change. |
| Comment | One commentator suggested modifying the example to reference policyholder elections. |
| Response | The reviewers disagree and made no change. |
| **Section 2.3, Guaranteed Element** | |
| Comment | One commentator suggested adding "typically" before "specified in the policy" and in the example sentence. |
| Response | The reviewers believe the language is appropriate and made no change. |
| **Section 2.4, Nonguaranteed Element** | |
| Comment | One commentator suggested rewording the second sentence for clarity. |
| Response | The reviewers agree and clarified the language accordingly. |
| Comment | One commentator suggested changing "can be changed at the discretion of the insurer" to "may be changed…" |
| Response | The reviewers disagree and made no change. |
| **Section 2.6, NGE Scale** | |
| Comment | One commentator suggested either deleting NGE scale as a defined term or referencing anticipated experience factors in the definition. |
| Response | The reviewers disagree with the suggestion but clarified the language and added examples. |
| **Section 2.9, Profitability Metric** | |
| Comment | One commentator suggested revising the language to replace "a product's expected level of financial results" with "projected profitability." |
| Response | The reviewers changed "expected" to "projected" based on this comment. |
| **SECTION 3. ANALYSIS OF ISSUES AND RECOMMENDED PRACTICES** | |
| **Section 3.1, NGE Framework** | |
| Comment | Two commentators suggested the difference between the determination policy and the NGE framework is unclear and suggested incorporating the concept of the NGE framework into the determination policy. |
| Response | The reviewers disagree with the suggestion to incorporate the concept of the NGE framework into the determination policy but clarified the language in sections 2.5 and 3.1. |
| Comment | One commentator suggested deleting the examples and moving them to the definition of NGE framework, because it is unclear whether the list is intended to be a documentation requirement. |
| Response | The reviewers disagree with moving the examples and refer the commentator to sections 3.10 and 4.1(a) with respect to documentation and disclosure**.** |
| **Section 3.1(e) (now section 3.1[d])** | |
| Comment | One commentator suggested deleting 3.1(e), methodology for allocating income and costs. |
| Response | The reviewers clarified the language. |

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| **Section 3.1(g) (now section 3.1[f])** | |
| Comment | One commentator suggested deleting "distribution strategy" from section 3.1(g). |
| Response | The reviewers changed "distribution strategy" to "distribution channels" (now 3.1[f]). |
| **Section 3.2, Providing Advice on the Actuarial Aspects of the Determination Policy** | |
| Comment | One commentator suggested combining sections 3.2 and 3.4. |
| Response | The reviewers believe the guidance is appropriate and made no change. |
| **Section 3.2(a)** | |
| Comment | Several commentators suggested deleting or modifying sections 3.2(a), 3.4.1(c), and 3.4.2.4 because the language is too prescriptive and best left to regulation. |
| Response | The reviewers believe the guidance is appropriate and made no change in response to these comments. |
| **Section 3.2(b)** | |
| Comment | Several commentators expressed concern about the phrase "recouping past losses or distributing past gains" being too prescriptive or ambiguous and suggested either deleting that language or inserting "if required by statute or regulation" as a condition. |
| Response | The reviewers disagree but added clarifying language to section 3.4.2.5 to address this comment. |
| Comment | One commentator suggested adding back the guidance from the first exposure draft regarding prospective pattern of profits by duration in sections 3.2(b), 3.4.1(g), and 3.4.2.4(c). |
| Response | The reviewers believe the guidance is appropriate and therefore made no change. |
| **Section 3.2.1, Providing Advice on Developing or Modifying the Determination Policy** | |
| Comment | One commentator suggested replacing the list (a)-(f) with a reference to section 3.1. |
| Response | The reviewers clarified the language in section 3.1 and the definition of NGE framework in section 2.5, but made no change to this section in response to this comment. |
| **Section 3.2.2, Providing Advice on Applying the Determination Policy** | |
| Comment | One commentator suggested combining this section with section 3.2.1. |
| Response | The reviewers disagree and made no change. |
| **Section 3.2.2(b)** | |
| Comment | One commentator suggested coordinating the reference to options with language in ASOP No. 7, *Analysis of Life, Health, or Property/Casualty Insurer Cash Flows*, on materiality, likelihood of antiselection, and impact on profitability metrics ("cash flows"). |
| Response | The reviewers added clarifying language to section 3.2.2(b). |
| **Section 3.2.2(d)** | |
| Comment | One commentator stated that the reference to reinsurance may be misconstrued as a requirement for post-reinsurance pricing. |
| Response | The reviewers disagree and made no change. |
| **Section 3.3, Establishment of or Changes to Policy Classes** | |
| Comment | One commentator suggested providing more guidance on the term "review." |
| Response | The reviewers believe the guidance is appropriate and therefore made no change. |

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| Comment | One commentator suggested adding consideration of contractual provisions before establishing or changing policy classes. |
| Response | The reviewers believe the guidance is appropriate and note that section 3.3.1 states that "the actuary should take into account the policy provisions." |
| **Section 3.3.1, For Future Sales of a New or Existing Product** | |
| **Section 3.3.1(b)** | |
| Comment | One commentator disagreed that policies can be assigned to more than one policy class. |
| Response | The reviewers believe the guidance is appropriate and made no change. |
| **Section 3.3.1(e)** | |
| Comment | One commentator suggested deleting the item that says that the actuary should not expect to redefine policy classes after issue. |
| Response | The reviewers added clarifying language and examples to section 3.3.1. |
| Comment | One commentator suggested adding "unless changes in anticipated experiences support changes to policy classes." |
| Response | The reviewers made no change in this section but added clarifying language to address redefinition of policy classes after issue in section 3.3.2. |
| **Section 3.3.2, For In-Force Policies** | |
| Comment | One commentator stated that this section should recognize that some policies cannot be reassigned if the actuary is limited by contract language. |
| Response | The reviewers believe this is covered in the requirement to follow the guidance in section 3.3.1 and made no change in response to this comment. |
| Comment | One commentator suggested identifying and using a different example. |
| Response | The reviewers believe the example is appropriate and made no change. |
| **Section 3.4, Determination Process for NGE Scales** | |
| Comment | One commentator suggested adding "the actuary should consider discussing these differences with management" in the last paragraph of section 3.4. |
| Response | The reviewers added clarifying language to section 3.4. |
| Comment | One commentator questioned using the word "relationship" in (b) and (f). |
| Response | The reviewers clarified the language in sections 3.4(b) and (f) in response to this comment. |
| Comment | One commentator suggested combining sections 3.2 and 3.4. |
| Response | The reviewers disagree with combining sections 3.2 and 3.4 but clarified the language in section 3.4 to reference section 3.2 in its entirety. |
| Comment | One commentator suggested that sections 3.4(f), 3.2.2(c), and 3.2.1(e) are inconsistent. |
| Response | The reviewers clarified the language in these sections to improve consistency. |
| **Section 3.4.1, Determination Process for Future Sales of a New or Existing Product** | |
| Comment | Two commentators suggested adding "if applicable" after "following." |
| Response | The reviewers disagree and made no change in response to this comment. |

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| Comment | One commentator questioned whether the section works for rates based on the market or based on an index. |
| Response | The reviewers added clarifying language to the definition of Nonguaranteed Element (NGE) in section 2.4 in response to this comment. |
| Comment | One commentator suggested that there is a bias in this section toward negative NGE changes and toward changes that are made infrequently, such as COI. |
| Response | The reviewers disagree that the language is biased toward negative NGE changes. The reviewers added an example of a change that could be made more frequently. |
| **Section 3.4.1(d)** | |
| Comment | One commentator suggested (d) was redundant with (f) and suggested deleting (d). |
| Response | The reviewers disagree and made no change. |
| **Section 3.4.1(g)** | |
| Comment | One commentator found the reference to section 3.4.2.4, which then refers to section 3.2, circular and confusing and suggested deleting (g). |
| Response | The reviewers deleted the reference to section 3.4.2.4 and clarified the language in response to this comment. |
| **Section 3.4.2, Determination Process for In-Force Policies** | |
| Comment | One commentator said that it is unclear whether the anticipated experience factors being referenced are those that were identified in the past, those that are currently experienced, or those that are expected in the future. |
| Response | The reviewers believe the language of this section, as well as the definition of anticipated experience factor in section 2.1, is clear and made no change. |
| **Section 3.4.2.1, Reviewing Prior Determinations** | |
| Comment | One commentator suggested adding "may" in the second sentence of the first paragraph. |
| Response | The reviewers agree and made the change. |
| **Section 3.4.2.2, Analyzing Experience** | |
| Comment | One commentator said that this section could be interpreted as saying that favorable past experience must be reflected in future anticipated experience factors and asked for clarification. |
| Response | The reviewers disagree and made no change. |
| Comment | One commentator noted that experience can come from a variety of sources. |
| Response | The reviewers added item (b) to the list of examples in section 3.1 in response to this comment. |
| Comment | One commentator said this section should not be limited to the determination of in-force policies. |
| Response | The reviewers note section 3.4.1(a) addresses consideration of how experience factors were developed for future sales of a new or existing product and therefore made no change in response to this comment. |
| **Section 3.4.2.3, Considering Whether to Recommend a Revision to NGE Scales** | |
| **Section 3.4.2.3(e)** | |

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| Comment | One commentator suggested replacing "at issue" and "in force" with "determination" and "redetermination," respectively. |
| Response | The reviewers disagreed with the suggestion but clarified the use of the term "determination" in section 1.2 in response to this comment. |
| **Section 3.4.2.3(j)** | |
| Comment | One commentator suggested replacing "policyholder" with "policyholder behavior." |
| Response | The reviewers clarified the language. |
| **Section 3.4.2.4, Determining the Revised NGE Scales** | |
| Comment | One commentator questioned whether the reference to section 3.2 in this section conflicts with the reference to section 3.2 in the last paragraph of section 3.4. |
| Response | The reviewers clarified the language in the last paragraph of section 3.4. |
| Comment | One commentator suggested replacing "appropriate level of analysis" with language more similar to 3.4.2.3(g). |
| Response | The reviewers believe the guidance is appropriate and made no change. |
| Comment | One commentator suggested combining sections 3.4.2.4 and 3.4.2.3. |
| Response | The reviewers believe the guidance is appropriate and made no change. |
| **Section 3.4.2.4(a)** | |
| Comment | Two commentators suggested deleting section 3.4.2.4(a) because "the reference to 'under the terms of the policy and applicable law' makes this a legal question, not an actuarial one." |
| Response | The reviewers clarified the language. |
| **Section 3.4.2.4(c)** | |
| Comment | Two commentators suggested deleting the "prospective pattern of profits by duration" from the example because it was too prescriptive. |
| Response | The reviewers clarified the language. |
| Comment | One commentator suggested deleting the entire example because this method may not be required by regulation. |
| Response | The reviewers kept the example but clarified the language. |
| **Section 3.4.2.5, Additional Considerations** | |
| Comment | One commentator suggested adding an example. |
| Response | The reviewers added an example. |
| **Section 3.5, NGEs Used in Illustrations Not Subject to ASOP No. 24** | |
| Comment | One commentator suggested deleting this section, the related disclosure in section 4.1(q), and language related to ASOP No. 24, *Compliance with the NAIC Life Insurance Illustrations Model Regulation,* in section 1.2. |
| Response | The reviewers disagree but clarified language related to illustrations not subject to ASOP No. 24. |
| **Section 3.6, Providing Regulatory Opinions and Disclosures (now Providing Opinions and Disclosures to Meet Regulatory Requirements)** | |
| Comment | One commentator suggested clarifying the meaning of "regulatory opinion." |
| Response | The reviewers clarified the language. |

| SECTION 4. COMMUNICATIONS AND DISCLOSURES | |
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| **4.1, Required Disclosures in an Actuarial Report** | |
| **4.1 (p)** | |
| Comment | One commentator suggested combining sections 4.1(p) and (g) because new anticipated experience factors don't need special documentation. |
| Response | The reviewers disagree and made no change. |