



AMERICAN ACADEMY of ACTUARIES

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October 31, 2022

Actuarial Standards Board
1850 M Street NW, Suite 300
Washington, DC 20036
Via email to comments@actuary.org

Re: ASB Comments—Comments on Exposure Draft of Proposed Revision of ASOP No. 41

Members of the Actuarial Standards Board:

The Pension Committee, Multiemployer Plans Committee and Public Plans Committee (the Committees) of the American Academy of Actuaries¹ are pleased to present the following comments to the Actuarial Standards Board (ASB) regarding the exposure draft of the proposed revision of Actuarial Standard of Practice No. 41, *Actuarial Communications* (ASOP No. 41). We believe much good work has been done to update ASOP No. 41 to reflect the development and evolution of ASOPs since the current version ASOP No. 41 was adopted in 2010. Nevertheless, the Committees are providing the following comments on the current exposure draft in the format requested below. Please note that recommended new text has been underlined and deleted text is listed in strikethrough.

I. Identification:

Name of Commentator / Company
Pension Committee, Multiemployer Plans Committee and Public Plans Committee of the American Academy of Actuaries

II. ASB Questions (If Any). Responses to any transmittal memorandum questions should be entered below.

Question No.	Commentator Response
1	<p>Q: Are the distinctions among actuarial communications, actuarial reports, and actuarial documentation clear? If not, what further clarifications would you recommend for the definitions?</p> <p>A: The Committees provided some comments below about specific concerns about these definitions. However, the Committees have significant concerns with a statement made in the discussion at the end of the September 30, 2022, Academy webcast on this exposure draft, highlighting potential</p>

¹ The American Academy of Actuaries is a 19,500-member professional association whose mission is to serve the public and the U.S. actuarial profession. For more than 50 years, the Academy has assisted public policymakers on all levels by providing leadership, objective expertise, and actuarial advice on risk and financial security issues. The Academy also sets qualification, practice, and professionalism standards for actuaries in the United States.

	<p>confusion with the definitions since the Committees didn't read the definitions the same way. Specifically, one of the presenters said that a "Principal" for a consultant could be their employer (instead of their client) if the consultant is performing a peer review of a colleague's work that is required by the employer. The Committees find that statement troublesome because peer review can refer to a wide variety of practices, many of which do not involve a certification of an actuarial finding. A peer review is often an interim step in producing an actuarial work product and often does not include a standalone work product that is being certified to by the reviewer; it is often only a step that is documented in internal workpapers as described in section 2.2 of the exposure draft. For example, a peer review may look at the language used in an actuarial communication to consider whether it is understandable by the intended user. However, the peer reviewer may not sign the final actuarial communication or report and may not even be known to the client. Peer review is only one example. Often there are many interim steps in developing an actuarial report for an external principal, and these steps may involve multiple actuaries. Therefore, the Committees want to make sure that interim internal actuarial work for purposes of background or interim work steps that are not intended for external use, in the case when the final actuarial work product is intended for an external user such as a client, is not considered an actuarial communication. In this situation, the actuary issuing the communication to the external principle is ultimately responsible for all of the content, including ensuring the accuracy of the interim steps. The only exception would be when the responsible actuary explicitly states reliance on the work of another actuary responsible for one of the interim steps, rather than assuming responsibility for that work. The Committees recommend a clarification to either (i) the definitions, or (ii) the scope of the standard to exclude such interim internal work steps.</p>
2	<p>Q: Section 3.3.3(b) introduces a proposed new "positive" disclosure requirement for an assumption or method not selected by the actuary that does not significantly conflict with what, in the actuary's professional judgment, would be reasonable for the purpose of the assignment. This would supplement the current "negative" disclosure requirement for an assumption or method that does significantly conflict. Is "significantly conflict" the appropriate disclosure language, as opposed to "reasonable"/"unreasonable" or some other terminology?</p> <p>A: The "significantly conflict" language is consistent with language in ASOP Nos. 27 and 35 and the Committees support the consistency of language and standards across various ASOPs and practice areas.</p>

III. Specific Recommendations:

Section # (e.g. 3.2.a)	Commentator Recommendation (Please provide recommended wording for any suggested changes)	Commentator Rationale (Support for the recommendation)
2.4	<p>Actuarial Report --A set of one or more recorded actuarial communications that the actuary issues as a formal documentation of actuarial findings and makes available to an intended user to support actuarial findings. A recorded actuarial communication is a communication issued in writing or another form available for later reference.</p>	<p>The word "report" is used in the definition of "actuarial report," which does not provide sufficient explanation of what is meant by actuarial report versus actuarial communication. In addition, the word "permanent" may be misconstrued as meaning never to be destroyed, which the Committees do not think is appropriate for all actuarial reports.</p>
2.5		<p>No changes recommended. However, the Committees note that there is a new sentence at the end that is not present in ASOP No. 1, the Code of Professional Conduct, or the new U.S. Qualification Standards. This causes a disconnect and potential confusion between this exposure draft and the other documents.</p>

3.1.1	The actuary should take appropriate steps to ensure that the form and content of each actuarial communication are sufficient, relevant and appropriate to the particular circumstances, taking into account the intended users .	The Committees do not think that adding “sufficient, relevant” adds clarity. Rather, it causes the Committees to question what is intended by “sufficient” that is different from something that is “appropriate to the particular circumstances.” The Committees suggest maintaining the language of the current ASOP No. 41.
3.1.5	The actuary should include, as appropriate to the particular circumstances and taking into account the intended users , cautions regarding possible <u>significant</u> uncertainty or risk, if any, associated with the actuarial findings	<p>The Committees suggest amending the language to specify that “significant” uncertainty or risks are disclosed. This is consistent with the requirements of section 3.2 of ASOP No. 51: “The actuary should identify risks that, in the actuary’s professional judgment, may reasonably be anticipated to significantly affect the plan’s future financial condition.” Otherwise, this exposure draft would require disclosures and actuarial work beyond that required in ASOP No. 51. Although ASOP No. 51 is specific to certain types of pension actuarial work, the Committees believe that this is an appropriate standard for other types of actuarial work as well.</p> <p>The Committees also suggest making “intended user” plural, which is consistent with other uses of the term in the exposure draft.</p>
3.1.6	When issuance of the actuarial report is expected to occur significantly later than an interim actuarial communication of key actuarial findings , the actuary should consider including applicable disclosure items discussed in section 3.3 in, <u>or subsequent to</u> , the interim actuarial communication .	If the communication is oral, then it is likely not possible to include the disclosure items during that communication. The Committees suggest making it clear the written disclosures may be made subsequent to the interim actuarial communication to accommodate oral communications. This change would be consistent the language in section 3.2.
3.2	When issuing an oral communication , the actuary may comply with the requirements of section 3.1 subsequent to issuing the oral communication <u>when the oral communication contains new actuarial findings that are relied upon by the intended user and the requirements of section 3.1 have not yet been fulfilled with respect to these findings.</u>	When issuing an oral communication, there may not be a need to comply with section 3.1. For example, the oral communication may be a continued discussion of a prior actuarial finding that was previously disclosed, or it may be a discussion of an actuarial finding where no new actuarial information is provided that is not in the prior actuarial communication. The Committees recommend clarifying this language to provide for these possibilities.
3.3.2	<u>Conflict of Interest – An actuary performing Actuarial Services involving an actual or potential conflict of interest should disclose the conflict to all present and known prospective Principals whose interests would be affected by the conflict. Precept 7 of the Code of Professional Conduct provides additional information regarding a conflict of interest.</u> [this paragraph would replace the current proposed wording]	<p>The Committees do not think this ASOP should attempt to define a conflict of interest, but rather should refer to Precept 7 in the Code of Conduct and mirror the definition and disclosure language from the Code of Conduct (see suggested replacement paragraph, first item).</p> <p>However, if there is a rationale for having a different definition in ASOP No. 41 than the requirements in the Code of Conduct, the</p>

	<p>or</p> <p><u>Conflict of Interest</u>—An actuary who is not financially, organizationally, or otherwise independent <u>of any of the intended users of the actuarial findings</u> should disclose any pertinent information that is not apparent <u>to the intended users</u>. This includes any situation where the actuary acts, or may appear to be acting, as an advocate.</p> <p>or</p> <p><u>Conflict of Interest</u>—An actuary who is not financially, organizationally, or otherwise independent <u>when performing actuarial services for an intended user</u> should disclose any pertinent information that is not apparent <u>to the intended users</u>. This includes any situation where the actuary acts, or may appear to be acting, as a <u>party who is not independent of the Principals or of the intended users</u> an advocate.</p>	<p>Committees think it is important to add that conflicts need to be disclosed in the context of this exposure draft only with respect to the intended users of the actuarial findings.</p> <p>The Committees also think the exposure draft should clarify to whom conflicts should be disclosed because it is not clear as drafted.</p> <p>The Committees are also concerned about the use of the word “advocate.” Retirement actuaries are often consultants to pension plan sponsors or other entities and, even if they are not a fiduciary of the pension plan, generally provide actuarial services that may provide actuarial options to address certain questions or concerns of plan sponsors or plan participants. Direct responses to help clients’ inquiries could potentially appear to some as acting as an advocate but may be provided in an independent or unbiased manner. The Committees do not think the last sentence is needed but if you keep it in the standard the Committees suggested a potential change.</p>
3.3.3, including subsections	Not provided	<p>Now that there will no longer be a general Setting Assumptions ASOP for all practice areas, the Committees suggest that consideration be given to having consistency across all practice areas. Specifically, the exposure draft refers to an “assumption or method specified by applicable law” (in 3.3.3.a) and an “assumption or method that was selected by another party” (in 3.3.3.b). However, in ASOP Nos. 4, 27, and 35, the separately defined terminologies used are a “prescribed assumption or method set by law” and a “prescribed assumption or method set by another party.” These are very clear definitions that could be useful in the exposure draft as well since those two concepts are also used in the current ASOP No. 41, but not as clearly defined. It would be helpful if all practice areas were to move to the definitions used in ASOP Nos. 4, 27, and 35 so definitions would be clearer, actuaries could use common language, and there would not be different definitions and considerations only for pension actuaries.</p> <p>In addition, the most recent versions of ASOP Nos. 4, 27, and 35 no longer allow the actuary to use the reason described in section 3.3.3(b)(5)(iii) as justification for not assessing reasonableness. If this is an appropriate principle for the ASB to apply to pension actuaries, the Committees suggest that it should be considered an appropriate principle for all actuaries. Section 4.2 of ASOP Nos. 4, 27, and 35 only have two specific disclosures for assumptions or methods not</p>

		<p>selected by the actuary that are not prescribed by law.</p> <p>Therefore, the Committees suggest adding the two clarifying definitions from the pension ASOPs referenced above, using those definitions in 3.3.3(a) and (b), and further changing 3.3.3(b)(5) to be more consistent with the pension ASOPs.</p>
3.3.5, including (b) and (d)	<p>The actuary should disclose those events, and their potential implications <u>and the date the actuarial report was finalized.</u></p>	<p>The Committees note that the last word in sections 3.3.5(b) and (d) was changed from “issued” to “finalized.” It is not clear what the intent is behind the change or what is meant by the new terminology. For example, is it when the report is ready to send and just has not yet been sent? The meaning of “finalized” should be clarified (no wording suggested) or the standard should revert to using “issued.”</p> <p>In addition, it may not be clear to the intended user when the report was finalized, after which point subsequent events were not considered or disclosed. The Committees have suggested that the last sentence of section 3.3.5 be changed to require that this information appear in the actuarial report, so it is clear to the intended user.</p>
3.3.6, first and last paragraphs	<p>The content of an actuarial report, or the need for an actuarial report, may be limited under certain circumstances, <u>such as when the when the actuarial findings will not be relied on by an intended user.</u> Examples of such circumstances <u>may</u> include the following:</p> <p>and</p> <p>If the actuary <u>issues an actuarial report, but</u> believes circumstances are such that including certain content <u>otherwise required in section 3.3</u> is not necessary or appropriate, the actuary must be prepared to <u>should</u> identify such circumstances and <u>provide rationale for justify</u> limiting the content of <u>the actuarial report.</u> <u>If the actuary believes that circumstances are such that an actuarial report is not necessary to document the actuarial findings, the actuary should be prepared to identify such circumstances, and to justify this decision.</u> The actuary should consider retaining the actuarial documentation for the content that was not included in the <u>an actuarial report.</u></p>	<p>The term “certain circumstances” is somewhat ambiguous, and the examples following the first paragraph may not always constitute actuarial communications. Therefore, the Committees think it is important to add some language more directly addressing a possible rationale and to add a clarifying word (“may”) to the second sentence.</p> <p>As noted in our response to Question No. 1, the Committees believe that interim internal actuarial work for purposes of background or interim work steps that are not provided to the intended user of the ultimate actuarial work product generally would not constitute an actuarial communication. Therefore, section 3.3 would generally not apply at all to these situations. In this light, section 3.3.6 appears to be included mainly for the benefit of those who might take a more inclusive view of what constitutes an actuarial communication, but where reasonable allowances for limiting the scope of the communication might be appropriate.</p> <p>The Committees are concerned that the language in section 3.3.6 could be interpreted more broadly than intended to exclude certain required content from an actuarial report. Therefore, when a formal actuarial report is issued and the actuary chooses to omit otherwise required content from the actuarial report, the Committees think it is not enough that the actuary be prepared to justify why</p>

		<p>they are not including that content. The Committees believe it is important to disclose the omission and provide the rationale for such omission so there is clarity to the intended user. The actuarial report would be a convenient mechanism for such disclosure. The Committees distinguish this from the situation where no actuarial report is required, in which case there may be no mechanism for a disclosure.</p> <p>In the final sentence, changing “the” to “an” allows for the possibility that no report has been issued.</p>
3.4	<p><u>Communication of Material Differences</u>—If an actuarial communication contains a materially different actuarial finding from a prior actuarial communication issued by the same actuary on the same topic, the actuary should communicate the change to the recipient(s) of the prior actuarial communication, <u>making it clear that the earlier results or opinion are no longer valid (if applicable) and explaining why they have changed.</u></p>	<p>The current ASOP No. 41 requires more specific information about changes to earlier results, including requiring the actuary to state that the earlier results are no longer valid (assuming this is accurate) and explaining to the intended user why the results have changed. The Committees think these two items are important and the intended user needs to know more than just the new results, which an actuary may read as all that would now be required. Therefore, the Committees think these two items should be added back into the exposure draft since they are important to help the intended user understand the differences, and so the documentation is there for future reference.</p>
3.6	<p><u>An actuarial communication making use of any such reliance should disclose the extent of reliance.</u></p>	<p>Section 4.1(c) requires disclosure of reliance on other sources and refers to section 3.6. However, the wording in the current ASOP No. 41 about what to disclose is not found in section 3.6 to guide the actuary. The wording to the left is consistent with the wording currently in ASOP No. 56 (see sections 3.4 and 3.5) and provides basic guidance to the actuary about what should be disclosed.</p>
3.7	<p><u>Nothing in this ASOP requires the actuary to disclose such additional materials to any party.</u></p>	<p>The Committees suggest it be made clear that “documentation” is not expected or required to be shared outside the actuary’s firm. This is a particularly important provision for the protection of internal work products. The current ASOP No. 41, section 3.8 has language replicated on the left that is helpful to include.</p> <p>In addition, Section 3.26 of ASOP No. 4, section 3.16 of ASOP No. 27, and section 3.11 of ASOP No. 35 refer to ASOP No. 41 and guidance regarding retention of internal documentation (Section 3.8 in the current ASOP No. 41, Retention of Other Materials). If this section is removed from ASOP No. 41, it is unclear how those references will be managed once the revised ASOP No. 41 is effective.</p>

4.1	<u>d. communication of material differences (section 3.4);</u>	It appears as if most items that are in actuarial communications that are not always actuarial reports are listed, except for section 3.4. Therefore, the Committees suggest adding it to the list of items in section 4.1.
4.2(d)	the acknowledgement of <u>the qualifications</u> , as specified in the U.S. Qualification Standards, <u>by the responsible actuary(ies)</u>	The Committees suggest the language in this section be clarified to indicate that the responsible actuary's qualifications should be acknowledged and to encompass the situation when multiple actuaries are responsible, as discussed in Section 3.1.4.
4.2(i)	any material assumption or method selected by a party other than the actuary <u>for which the actuary is not taking responsibility</u> (see section 3.3.3[b])	As currently worded, section 3.3.3(b) only requires disclosure of material assumptions or methods selected by another party for which the actuary is not taking responsibility. It appears not to address the possibility that an actuary could perform an analysis of the reasonableness of that assumption and that the other party selects the assumptions based on the actuary's recommendation. In this case, the actuary is taking joint responsibility for the assumption. The suggested wording changes to the left provide more explicit consistency with section 3.3.3(b).

IV. General Recommendations (If Any):

Commentator Recommendation (Identify relevant sections when possible)	Commentator Rationale (Support for the recommendation)
None	

V. Signature:

Commentator Signature	Date
See below	November 1, 2022

The Committees appreciate the ASB giving consideration to these comments. Please contact Philip Maguire, the Academy's pension policy analyst (maguire@actuary.org; 202-223-7868), if you have any questions or would like to arrange a convenient time to discuss this matter further.

Respectfully submitted,

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