

**Title of Exposure Draft:**

**Comment Deadline: [Month, Day, Year]**

Proposed Actuarial Standard of Practice (ASOP) No. 24, Compliance with the NAIC Life Insurance Illustrations Model Regulation

September 15, 2023

Instructions: Please review the exposure draft, and give the ASB the benefit or your recommendations by completing this comment template. Please fill out the tables within the section below, adding rows as necessary. Sample for completing the template provided at the following link: <http://www.actuarialstandardsboard.org/email/2020/ASB-Comment-Template-Sample.docx>

Each completed comment template received by the comment deadline will receive consideration by the drafting committee and the ASB. The ASB accepts comments by email. Please send to [comments@actuary.org](mailto:comments@actuary.org) and include the phrase 'ASB COMMENTS' in the subject line. Please note: Any email not containing this exact phrase in the subject line will be deleted by our system's spam filter.

The ASB posts all signed comments received to its website to encourage transparency and dialogue. Comments received after the deadline may not be considered. Anonymous comments will not be considered by the ASB nor posted to the website. Comments will be posted in the order that they are received. The ASB disclaims any responsibility for the content of the comments, which are solely the responsibility of those who submit them.

**I. Identification:**

Name of Commentator / Company
David J. Hippen

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

Question No.	Commentator Response

**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)
Title	Compliance with State Laws Regulating Life Illustrations	NAIC Models are not laws.

**IV. General Recommendations (If Any):**

Commentator Recommendation (Identify relevant sections when possible)	Commentator Rationale (Support for the recommendation)
To: The Actuarial Standards Board Re: Comments on Proposed ASOP 24  The NAIC has no regulatory authority. NAIC officials and NAIC legal counsel have continually insisted that NAIC models and Actuarial Guidelines (AGs) are intended to give guidance to state insurance regulators. They are not laws, so applying the word "compliance" is inappropriate for NAIC models and	

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<p>guidelines. State legislation and regulations have the force of law, with which compliance is required.</p> <p>AGs are usually included in the NAIC Financial Examiners Handbook, which many states use as guidance in conducting financial examinations of insurance carriers. In a few instances, AGs have been incorporated into the NAIC Valuation Manual (VM), which appears to confer the force of law because of state statutes which require compliance with the VM. But this has not been done for life illustration regulation or the AGs which refer to it.</p> <p>Some state actuaries who in the past have stated that noncompliance with an AG constitutes a violation of law were corrected by NAIC officers. NAIC has advised that officials should restrict their communication to using the word “conform” or “conformity,” and not “comply” or “compliance” when referring to statements or actions that seem subject to the guidance of AGs.</p> <p>Adoption of NAIC models by the states virtually always involves modification of the NAIC language to adapt to the regulatory style of the state. For example, the State of Washington legislature passed laws incorporating NAIC Life Illustration Model Regulation language, i.e., not as a Washington OIC regulation. Some states have made significant changes to NAIC models before adopting them, and almost no states adopt AGs into law. Some states neither adopt some model laws nor follow some AGs.</p> <p>A more appropriate title for ASOP 24 might be “Compliance with State Laws Regulating Life Illustrations.” While ASOPs are also not “laws” per se, they seem to be routinely relied upon by regulators as well as actuaries as having legitimate legal authority as part of the self-regulation of accredited actuaries. (That premise makes it appropriate, for example, for ASOPs to have effective dates.)</p> <p>Where the proposed ASOP discusses the impact of AGs, e.g., AG-49 and AG-49a, as “clarifying” the language of the NAIC Model, this seems appropriate. AGs are not “interpretations” of the law, which is reserved for state regulations, but “clarifications.” Where the proposed ASOP discusses “compliance” with AGs, the more appropriate word (as advised by the NAIC) might be “conformity.”</p> <p>David J. Hippen, FSA, MAAA, FLMI</p> <p>Note: These comments are my personal views, and do not represent the position of my employer.</p>	

**V. Signature:**

Commentator Signature	Date
<i>David J. Hippen, FSA, MAAA, FLMI</i>	September 12, 2023