



ACTUARIAL STANDARDS BOARD

**Actuarial Standard
of Practice
No. 17**

Expert Testimony by Actuaries

Revised Edition

**Developed by the
ASOP No. 17 Task Force of the
General Committee of the
Actuarial Standards Board**

**Adopted by the
Actuarial Standards Board
June 2018**

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June 2018

TO: Members of Actuarial Organizations Governed by the Standards of Practice of the Actuarial Standards Board and Other Persons Interested in Expert Testimony by Actuaries

FROM: Actuarial Standards Board (ASB)

SUBJ: Actuarial Standard of Practice (ASOP) No. 17

This document contains the revision of ASOP No. 17, *Expert Testimony by Actuaries*.

History of the Standard

The ASB originally adopted ASOP No. 17, *Expert Testimony by Actuaries*, in 1991. Since that time, actuarial practice in this area has evolved. Under the direction of the ASB, the Expert Witness Task Force revised ASOP No. 17 in 2002 to be consistent with the then current ASOP format and to reflect current practices in the area of expert testimony. ASOP No. 17 was further updated for deviation language, effective May 1, 2011. In 2015, the ASB concluded that this ASOP should be revised to reflect applicable law and regulation.

Exposure Draft

The exposure draft was issued in April 2017 with a comment deadline of June 30, 2017. Eleven comment letters were received and considered in making changes that are reflected in this final ASOP. For a summary of issues contained in these comment letters, please see appendix 2.

Notable Changes from the Exposure Draft

Changes made to the exposure draft include the following:

1. Section 1.2, Scope, was reworded to provide additional guidance regarding the circumstances under which the standard applies.
2. The definition of expert in section 2.4 was clarified.
3. Section 3.2, Reliance Upon Attorney or Other Representative of the Principal, was clarified.
4. Section 3.8, Hypothetical Questions, was clarified.

The ASB thanks everyone who took the time to contribute comments and suggestions on the exposure draft.

The ASB voted in June 2018 to adopt this standard.

ASOP No. 17—Doc. No. 192

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The Actuarial Standards Board (ASB) sets standards for appropriate actuarial practice in the United States through the development and promulgation of Actuarial Standards of Practice (ASOPs). These ASOPs describe the procedures an actuary should follow when performing actuarial services and identify what the actuary should disclose when communicating the results of those services.

ACTUARIAL STANDARD OF PRACTICE NO. 17

EXPERT TESTIMONY BY ACTUARIES

STANDARD OF PRACTICE

Section 1. Purpose, Scope, Cross References, and Effective Date

- 1.1 Purpose—This actuarial standard of practice (ASOP) provides guidance to actuaries providing **expert testimony**.
- 1.2 Scope—This standard applies to actuaries who are qualified as **experts** under the evidentiary rules applicable in a forum when they provide **testimony** in court hearings, dispute resolutions, depositions, rate hearings, legislative hearings, or other similar proceedings.

This standard does not apply to an individual whose **testimony** and qualification as an **expert** are unrelated to the individual's education, training, experience, or employment as an actuary.

This standard supplements the *Code of Professional Conduct* (Code) and is intended to provide specific guidance with respect to the actuary providing **expert testimony**. Reference should also be made to other actuarial standards of practice concerned with the actuarial substance of the assignment.

Nothing in this standard is intended to discourage reasonable differences of actuarial opinion, or to inhibit innovation in advancing the practice of actuarial science. Further, this standard is not intended to restrain the selection of **actuarial assumptions** or **actuarial methods**, the communication of actuarial opinions, or the relationship between the actuary and a **principal**. Nothing in this standard is intended to prevent the actuary from challenging the application or a particular interpretation of existing precedent, law, or regulation where such application or interpretation would, in the opinion of the actuary, be inconsistent with otherwise appropriate actuarial practice.

Nothing in this standard is intended to require any communication or action that is inconsistent with the rules of evidence or procedure of any court or other judicial body, legislative forum, administrative forum, arbitral forum, or other forum in which the actuary testifies. To the extent that the standard is inconsistent with the evidentiary and procedural rules applicable in the forum in which the actuary offers **expert testimony**, the actuary should follow the forum's rules of evidence and procedure and any other applicable rules in the forum.

If the actuary departs from the guidance set forth in this standard in order to comply with applicable law (statutes, regulations, and other legally binding authority), or for any other reason the actuary deems appropriate, the actuary should refer to section 4.

- 1.3 Cross References—When this standard refers to the provisions of other documents, the reference includes the referenced documents as they may be amended or restated in the future, and any successor to them, by whatever name called. If any amended or restated document differs materially from the originally referenced document, the actuary should consider the guidance in this standard to the extent it is applicable and appropriate.
- 1.4 Effective Date—This standard will be effective for all **expert testimony** provided by the actuary on or after December 1, 2018.

Section 2. Definitions

The terms below are defined for use in this actuarial standard of practice.

- 2.1 Actuarial Assumption—The value of a parameter or other actuarial choice having an impact on an estimate of a future cost or other actuarial item under evaluation.
- 2.2 Actuarial Method—A procedure by which **data** or assumptions are analyzed or utilized for the purpose of estimating a future cost or other actuarial item.
- 2.3 Data—Numerical, census, or classification information, or information derived mathematically from such items, but not general or qualitative information. **Actuarial assumptions** are not **data**, but **data** are commonly used in the development of **actuarial assumptions**.
- 2.4 Expert—One who is qualified under the evidentiary rules applicable in the forum to testify as an expert, whether explicitly or by acceptance of the actuary's **testimony**. An actuary who has been engaged to testify, or permitted to testify, with the expectation that the actuary will ultimately qualify as an expert is treated as an **expert** for purposes of this standard, even if the actuary does not testify or is later determined not to qualify as an expert.
- 2.5 Principal—Subject to the rules of evidence and procedure and any other rules applicable in the forum, the client or employer of the actuary with regard to the **expert testimony**, depending on the facts and circumstances surrounding the engagement.
- 2.6 Testimony—Communication of opinions or findings presented in the capacity of an expert witness at trial, in hearing or dispute resolution, in deposition, by declaration or affidavit or by any other means through which **testimony** may be received. Such **testimony** may be oral or written.

Section 3. Analysis of Issues and Recommended Practices

- 3.1 Overview—An actuary providing **expert testimony** performs an important service to the forum, the finder of fact in the forum, and the public by providing information that can be critical to resolution of disputes. This may include explaining complex technical concepts so they can be understood by the audience to whom the **testimony** is directed. Actuaries may

differ in their conclusions even when applying reasonable **actuarial assumptions** and appropriate **actuarial methods**, and a mere difference of opinion between actuaries does not suggest that an actuary has failed to meet professional standards. However, an actuary providing **expert testimony** should, subject to the rules of evidence and procedure and any other rules applicable in the forum, comply with the requirements of the Code.

- 3.2 Reliance Upon Attorney or Other Representative of the Principal—An **expert** will ordinarily work closely with the attorney or other representative of the **principal**. An actuary serving as an **expert** may reasonably rely upon the advice, information, or instruction provided by an attorney or other representative of the **principal** concerning the meaning and requirements of the rules of evidence or procedure and any other rules applicable in the forum. An actuary relying on such advice, information, or instruction is not in violation of this standard for having complied with the advice or instruction, or used the information, even if a judge, arbitrator, hearing examiner, or other authority of the forum charged with ruling on procedural, evidentiary, or other matters subsequently determines that the advice, information, or instruction is inconsistent with or violates the rules of evidence, procedure, or any other rules applicable in the forum.
- 3.3 Review and Compliance—In offering **expert testimony**, the actuary should comply with all rules of evidence and procedure and any other rules applicable in the forum. In addition, the actuary should review and comply with any applicable actuarial standards of practice, the Qualification Standards for Actuaries Issuing Statements of Actuarial Opinion in the United States, and the Code.
- 3.4 Conflict with Laws and Regulations—If the actuary believes that a relevant law or regulation contains a material conflict with appropriate actuarial practices, the actuary should disclose the conflict, subject to the requirements of the forum, including without limitation all rules of evidence and procedure.
- 3.5 Conflict of Interest—The actuary should be aware of the possibility of conflict of interest, and should address any real or apparent conflict of interest in accordance with Precept 7 of the Code.
- 3.6 Advocacy—In those circumstances where it is consistent with the rules of evidence and procedure, and any other rules applicable in the forum, an actuary may act as an advocate for a **principal** when giving **expert testimony**. Acting as an advocate does not relieve the actuary of the responsibility to comply with the Code, and to use reasonable **actuarial assumptions** and appropriate **actuarial methods** (unless using **actuarial assumptions** or **actuarial methods** prescribed by law or selected by others that may not be reasonable and appropriate, and so disclosing in accordance with section 3.7).
- 3.7 Actuarial Assumptions or Actuarial Methods Prescribed by Law or Selected by Others—If the actuary performs calculations using **actuarial assumptions** or **actuarial methods** prescribed by law or selected by others, the actuary should disclose, subject to the rules of the forum, and to the extent material and relevant, whether the results are consistent with the actuary's own **expert** opinion.

- 3.8 Hypothetical Questions—The actuary may be asked to answer hypothetical questions. Hypothetical questions may fairly reflect facts in evidence, may include only a part of the facts in evidence, or may include **actuarial assumptions** the actuary believes to be unreasonable. If permitted by the rules of evidence and procedure and any other rules applicable in the forum, and by the rulings of a judge or other official charged with overseeing the forum, the actuary may refuse to answer hypothetical questions based upon what the actuary believes in good faith to be unreasonable **actuarial assumptions**.
- 3.9 Testifying Concerning Other Relevant Testimony—Subject to the rules of evidence and procedure of the forum, when the actuary provides **expert testimony** concerning other relevant testimony, including opposing testimony, the actuary should testify objectively, focusing on the reasonableness of the other testimony and not solely on whether it agrees or disagrees with the actuary’s own opinion.
- 3.10 Cross Examination—During cross-examinations, subject to the rules of the forum, the actuary is not required to volunteer information that is not fairly encompassed within the scope of the question.
- 3.11 Consistency with Prior Statements—When giving **expert testimony**, the actuary should be mindful of statements the actuary may have made on the same subject. If the actuary employs different **actuarial assumptions** or **actuarial methods** in the current situation, the actuary should be prepared to explain why.
- 3.12 Discovery of Error—If, after giving **expert testimony**, the actuary discovers that a material error was made, the actuary should make appropriate disclosure of the error to the forum or to the **principal** or the **principal’s** representative as soon as practicable. Any such disclosure should be made in accordance with the rules of evidence and procedure and any other rules applicable in the forum.
- 3.13 Limitation of Expert Testimony—The actuary should present **expert testimony** in a manner appropriate to the nature of the forum and consistent with the rules of evidence and procedure and any other rules applicable in the forum. If any constraints are imposed or expected to be imposed on the actuary’s ability to comply with the Code or other professional standards, the actuary should consider whether it is appropriate to serve or continue to serve as an **expert**.

Section 4. Communications and Disclosures

- 4.1 Written Testimony—When providing **expert testimony** in writing, the actuary should provide **testimony** in accordance with the rules of evidence and procedure and any other rules applicable in the forum and describe the scope of the assignment, including any limitations or constraints. The written **testimony** should, to the extent appropriate to the forum and intended audience, include descriptions and sources of the **data**, **actuarial assumptions**, and **actuarial methods** used in the analysis.

- 4.2 Oral Testimony—When providing **expert testimony** orally, the actuary should provide oral **testimony** in accordance with the rules of the forum and in a manner appropriate to the intended audience. In addition, the actuary should, to the extent practicable and subject to the rules of evidence and procedure and any other rules applicable in the forum, be prepared to provide documentation supporting the oral **testimony**.
- 4.3 Communication and Disclosure—When providing **expert testimony**, the actuary should comply with ASOP No. 41, *Actuarial Communications*, and, in addition, disclose the following items, as applicable, and as permitted by the rules of evidence and procedure and any other rules applicable in the forum, and to the extent material to the **testimony**:
- a. material conflicts between laws and regulations and appropriate actuarial practices, as described in section 3.4;
 - b. if the actuary performed calculations using **actuarial assumptions** or **actuarial methods** prescribed by law or selected by others, whether the results are consistent with the actuary’s own **expert** opinion, as described in section 3.7; and
 - c. any material errors discovered after giving **expert testimony**, as described in section 3.12.
- 4.4 Additional Disclosures—The actuary should also include the following, as applicable, in an actuarial communication:
- a. the disclosure in ASOP No. 41, section 4.2, if any material assumption or method was prescribed by applicable law (statutes, regulations, and other legally binding authority);
 - b. the disclosure in ASOP No. 41, section 4.3, if the actuary states reliance on other sources and thereby disclaims responsibility for any material assumption or method selected by a party other than the actuary; and
 - c. the disclosure in ASOP No. 41, section 4.4, if, in the actuary’s professional judgment, the actuary has otherwise deviated materially from the guidance of this ASOP.

Appendix 1

Background and Current Practices

Note: The following appendix is provided for informational purposes, but is not part of the standard of practice.

Background

Since the standard was first adopted, actuaries have become increasingly active as expert witnesses, appearing in a greater variety of venues and addressing an expanding range of topics. As actuaries have become more knowledgeable about providing expert testimony, the need for educational material has lessened to some degree.

Current Practices

Actuaries may be called upon to give expert testimony concerning a broad range of issues. These include, without limitation, matters such as the following:

- a. actuarial present values of retirement or other benefits;
- b. actuarial values incident to a divorce;
- c. adequacy or appropriateness of reserves, premium rates, pricing or underwriting procedures, or provision for administrative costs;
- d. cost impact of claims-made or claims-paid financing;
- e. cost impact of risk classification systems, tort liability decisions, or legislative/regulatory proposals;
- f. actuarial reviews of provider reimbursement amounts, provider network adequacy, provider comparison studies, provider quality reviews, and contractual provisions for various health care services;
- g. lost earnings of a decedent or injured person and the actuarial present value of such lost earnings;
- h. malpractice of an actuary;
- i. actuarial equivalency or other technical provisions in the design or administration of defined benefit pension plans;
- j. faulty design, administration or communication of amendments to defined benefit pension plans;

- k. financial impact on a defined benefit plan of alternative interpretations of, or amendments to, disputed plan provisions;
- l. relationships between risk and return on investments;
- m. value of an insurance company or other entity; and
- n. withdrawal liability assessments under multiemployer benefit plans.

Appendix 2

Comments on the Exposure Draft and Responses

The exposure draft of this revision of ASOP No. 17, *Expert Testimony by Actuaries*, was issued in April 2017 with a comment deadline of June 30, 2017. Eleven 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 Task Force carefully considered all comments received, and the General Committee and ASB reviewed (and modified, where appropriate) the proposed changes.

Summarized below are the significant issues and questions contained in the comment letters and the responses to each.

The term “reviewers” includes the Task Force, General Committee, and the ASB. Unless otherwise noted, the section numbers and titles used below refer to those in the exposure draft.

GENERAL COMMENTS	
Comment	One commentator noted only that the proposed revisions improve the ASOP. Several commentators had generally favorable comments about the proposed revisions, while providing specific suggestions for certain sections, as outlined below.
Response	One commentator suggested that the ASOP include a reference to Actuarial Board for Counseling and Discipline (ABCD) guidance. The reviewers disagree and note ABCD guidance is readily available and not included in ASOPs. Therefore, the reviewers made no change.
Comment	One commentator suggested that the proposed ASOP was repetitious in stating that the rules of the forum must be followed, and stated that the ASOP should explain why so much legal terminology is used in the ASOP.
Response	The reviewers concluded that, given the nature of the ASOP as dealing with proceedings that are usually legal in nature, the use of legal terminology is appropriate. Therefore, the reviewers made no change.
Comment	One commentator had numerous suggestions for ways in which the ASOP could provide specific advice to actuaries who serve as expert witnesses.
Response	The reviewers note that ASOPs are principles-based and do not attempt to be prescriptive, as discussed in ASOP No. 1, <i>Introductory Actuarial Standard of Practice</i> , section 3.1.4. Therefore, the reviewers made no change.
Comment	One commentator requested that the ASOP address the issue of actuaries testifying that other actuaries (hired by a different party to a dispute) have violated ASOPs in their testimony. The commentator suggested that the ASOP address the proper way of interpreting ASOPs and further suggested that it is improper for an actuary to testify that another actuary has violated an ASOP.
Response	The reviewers believe that the ASOP should not limit the ability of an actuary to testify regarding compliance with the ASOPs. Therefore, the reviewers made no change.

SECTION 1. PURPOSE, SCOPE, CROSS-REFERENCES, AND EFFECTIVE DATE	
Section 1.2, Scope	
Comment	One commentator stated that the scope is clear and appropriate. Another commentator was appreciative of the statement that the standard is not intended to inhibit innovation in advancing the practice of actuarial science.
Comment	One commentator suggested that the first sentence of scope be expanded to include the examples in the definition of testimony, so that it would be clear to a reader who did not have access to the electronic hyperlink.
Response	The reviewers note that the standard format relies on reference to the definitions in section 2 and made no change.
Comment	One commentator stated that it is unclear whether legislative hearings are included, noting that some are adversarial.
Response	The reviewers note that the term “adversarial” was a source of confusion, and modified the scope to avoid the use of that term and to clarify that legislative hearings and similar proceedings are included.
Comment	One commentator stated that rate hearings should not be included in the scope because they should be covered by other standards.
Response	The reviewers disagree and made no change in response to this comment.
Comment	One commentator, referring to the fact that the proposed ASOP did not cover non-actuarial testimony by individuals who happen to also be actuaries, stated that users of such testimony would need some way to understand that the ASOP is not applicable. The commentator suggested that the actuary should so state in his or her written testimony, or be precluded from using initials showing membership in an actuarial organization.
Response	The reviewers disagree and note that the standard cannot prescribe disclosures in cases where the standard does not apply. Therefore, the reviewers made no change in response to this comment.
Section 1.4, Effective Date	
Comment	Three commentators expressed the view that an effective date of four months after adoption is reasonable. Several commentators were concerned that the effective date of four months after adoption of the standard would have an adverse impact on expert witness engagements that were initiated before the date of adoption but not completed as of the effective date. Another commentator suggested the effective date should be 12 months after adoption, with voluntary early adoption.
Response	The reviewers do not believe an effective date occurring in the middle of an engagement would cause any problems, and made no change.
Comment	One commentator stated that the effective date is reasonable but should be clarified to specify which version of the ASOP controls when an engagement started before the effective date and is ongoing after the effective date.
Response	The reviewers believe the effective date is clear and made no change.
SECTION 2. DEFINITIONS	
Section 2.2, Actuarial Method	
Comment	One commentator suggested that “A procedure by which data are analyzed...” should be modified to say “A procedure by which data or assumptions are analyzed...”
Response	The reviewers agree and added “or assumptions” to the definition.

Section 2.3, Data	
Comment	One commentator noted that the definition of “data” was inconsistent with the definition in other ASOPs.
Response	The reviewers agree and modified the definition to be consistent with other ASOPs.
Section 2.4, Expert	
Comment	One commentator stated that the standard should remind actuaries that the term “expert” may include an employee of one of the parties to the controversy.
Response	The reviewers believe that the guidance is clear and made no change in response to this comment.
Comment	One commentator stated that the definition of “expert” is self-referential.
Response	The reviewers note that certain uses of the term “expert” within the definition of “expert” refer to the “evidentiary rules applicable in the forum.” For clarity, these uses of the term were not bolded.
SECTION 3. ANALYSIS OF ISSUES AND RECOMMENDED PRACTICES	
Section 3.1, Overview	
Comment	One commentator questioned the statement in the proposed ASOP that an actuary should act with honesty, integrity and competence. The commentator suggested that the ASOP also refer to the purpose of upholding the reputation of the actuarial profession.
Response	The reviewers believe that it is not necessary or desirable to restate the Precepts of the <i>Code of Professional Conduct</i> (Code) in an ASOP. Therefore, the reviewers simplified the language to not duplicate concepts covered by the Code.
Section 3.2, Reliance Upon Attorney or Other Representative of the Principal	
Comment	Several commentators objected to the statement that an actuary is “not responsible” for following the advice or instructions of an attorney or representative of the principal.
Response	The reviewers clarified section 3.2 by substituting “not in violation of this standard” for “not responsible.”
Comment	One commentator noted that the actuary may rely on the principal’s attorney or representative but not on the principal, and asked if this was intended.
Response	The reviewers note this was intentional and made no change.
Comment	One commentator requested guidance on how an actuary should resolve the conflict if a judge or arbitrator decides that the attorney’s advice is contrary to the rules of the forum.
Response	The reviewers believe that the ASOP should not address specific questions relating to the rules of the forum, to which the actuary will be subject regardless of the ASOP. Therefore, the reviewers made no change.

Section 3.6, Advocacy	
Comment	One commentator noted that the rules for advocacy vary by country and suggested that the fact that ASOPs apply only to U.S. practice should be noted in the transmittal memorandum, the standard, or the appendix.
Response	The reviewers note that ASOP No. 1, section 1, addresses this issue. Therefore, the reviewers made no change.
Comment	One commentator suggested that it may be appropriate to define the word “advocate.”
Response	The reviewers disagree and believe that defining “advocate” is not necessary because the ASOP applies when the actuary is providing expert testimony, regardless of whether the actuary is acting as an advocate. Therefore, the reviewers made no change.
Comment	One commentator requested that the phrase “may act as an advocate” be changed to “may or may not act as an advocate.”
Response	The reviewers believe the language is clear and made no change.
Comment	One commentator requested that the phrase “in the actuary’s professional judgement” be inserted between “that” and “may” in the parenthetical phrase.
Response	The reviewers believe the parenthetical phrase is clear and made no change.
Section 3.7, Actuarial Assumptions or Actuarial Methods Prescribed by Law or Selected by Others	
Comment	One commentator suggested that additional text be added to clarify that an actuary is not in violation of the standard if the actuary is unable to make the disclosure required by section 3.7.
Response	The reviewers believe the language is clear and made no change.
Section 3.8, Hypothetical Questions	
Comment	One commentator suggested that section 3.8 should be expanded to include unreasonable assumptions that are not actuarial assumptions, in addition to unreasonable actuarial assumptions.
Response	The reviewers disagree and made no change.
Comment	One commentator suggested that an actuary should not have to answer any hypothetical questions.
Response	The reviewers disagree and note that hypothetical questions may be a valid part of testimony. Therefore, the reviewers made no change.
SECTION 4. COMMUNICATIONS AND DISCLOSURES	
Section 4.4, Additional Disclosures	
Comment	One commentator suggested that in certain circumstances, it may be difficult for an actuary to provide the disclosure required by section 4.4 of ASOP No. 41, <i>Actuarial Communications</i> , relating to material deviations from an ASOP. The commentator also requested that the ASOP provide examples of how a witness could comply with this requirement.
Response	In light of the guidance in the ASOP that an actuary is not required to deviate from the rules of the forum, the reviewers believe that the requirements of this section are not more difficult than other situations in which section 4.4 of ASOP No. 41 would apply. Therefore, the reviewers made no change.