

ASB Airs Summer Rerun: Seeks Round 2 of ASOP 2 Comments

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When last we left the Actuarial Standards Board (ASB), the board was considering comments on the first exposure draft of proposed changes to Actuarial Standard of Practice No. 2 (ASOP 2), now titled “Nonguaranteed Elements for Life Insurance and Annuity Products.” See “Proposed Revisions to ASOP 2 May Impact Your Product Pricing and Litigation Exposure,” *Expect Focus – Life, Annuity, and Retirement Solutions* (June 2019); “Mostly Tricks Proposed for ASOP 2,” *Expect Focus – Life, Annuity, and Retirement Solutions* (October 2019). The ASB is now back with a second ASOP 2 exposure draft that seeks to address many of the issues raised in the 16 comments received from various insurers, individuals, and industry groups.

Given the recent attention to nonguaranteed elements (NGEs) from both litigants and regulators (see N.Y. Reg. 210), the ASB is seeking to modernize ASOP 2 to “reflect current practices and provide additional guidance on the determination of NGEs.” Many comments received on the ASB’s first go-around at revising ASOP 2 focused on sections 3.2 and 3.4 — “Issues and Considerations When Providing Advice on the Actuarial Aspects of the Determination Policy” and “Determination Process for NGE Scales,” respectively. Several of the comments argued that the proposed revisions amounted to overly prescriptive restrictions on actuaries’ discretion.

The ASB appears to have taken the issues to heart, as the new exposure draft makes several changes to those sections. The proposed changes to sections 3.2 and 3.4 appear aimed at providing more discretion to actuaries in their NGE determinations, including expanding factors actuaries can consider. To that end, the ASB added a new section 3.4.2.5 “to allow the actuary to take into account anticipated experience factors that were not part of the previous determination of NGE scale.” That new section reads:

Additional Considerations — When recommending or determining a revision to **NGE scales**, the actuary may consider using additional **anticipated experience factors** that were not part of the previous determination of **NGE scales**.

The ASB also added language to several sections, including sections 3.2.1 and 3.3.1, “to allow the actuary to consider other relevant items or additional factors” and made other changes in language to expand the discretion that commenters argued was lacking in the previous draft. At the same time, the ASB appears to have expanded actuaries’ documentation obligations in several places, including in sections 3.2, 3.4, and 4.1, which address development and modification of determination policies, development of NGE scales, and disclosures in actuarial reports.

November 13, 2020, is the deadline for comments on the ASB’s new ASOP 2 exposure draft. If past is prologue, there will be numerous comments for the ASB to consider. Thus, it is unlikely that a new ASOP 2 will be in place before the second quarter of 2021, and likely later than that.

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