Comments on the Exposure Draft of

A Public Policy Practice Note on Variable Annuity Plans

February 16, 2016

Pension Committee of the American Academy of Actuaries

The ASPPA College of Pension Actuaries (ACOPA) appreciates this opportunity to comment on the Exposure Draft of the Public Practice Note on Variable Annuity Plans ("Exposure Draft"), prepared by the Pension Committee of the American Academy of Actuaries ("Committee"), and to recommend improvements for future updates to this Exposure Draft. ACOPA appreciates the effort that went into this Exposure Draft, and applauds the Committee for issuing an Exposure Draft and soliciting comments and recommendations. ACOPA also commends the Committee for presenting alternate approaches to the valuation of liabilities and the calculation of equivalent lump sum payments for benefits provided under a variable annuity plan ("VAP").

General Comments

The Exposure Draft would be improved by providing more substance regarding views potentially contrary to the "consistent with discount rate" valuation approach. For example, the introduction notes that "Cash balance plans that credit market rates of return are closely related" to VAPs, but existing guidance on cash balance plans that might, in our view, conflict with the "consistent with discount rate" valuation methodology is not cited in the discussion of the determination of funding target or the determination of lump sum payment amounts for plans subject to Internal Revenue Code ("Code") §417(e). A fuller presentation of alternate views, including discussion of existing guidance that arguably supports an alternate view, will better serve actuaries who reference this Exposure Draft. Discussion of this guidance and how it might relate to VAPs is provided in more detail below.

Summary of Recommendations

.*ACOPA recommends* that:

I. **Scope.** The scope of the Exposure Draft should be expanded to discuss the application of Code §411(a)(9) and §415 to VAPs. Both of these issues are integral to the topics covered in the Exposure Draft with regard to qualified retirement plans. This is because these issues directly bear on the calculation of VAP benefits and may impact whether a plan can algebraically be considered a pure VAP.

II. **Valuing Variable Annuity Plans.** The Exposure Draft should include empirical data and analysis supporting the use of a "pure" VAP as the baseline for discussion of liability measurement and lump sum determination for a VAP.

III. **Financial Accounting.** The discussion of private sector financial accounting in the Exposure Draft would be enhanced by additional discussion harmonizing suggested Method 1 and the FAS requirement to use explicit assumptions.

IV. **Single Employer Private Sector Funding**. The "Single Employer Private Sector Funding" section of the Exposure Draft should be expanded to incorporate discussion of current regulations regarding the determination of a plan's funding target.

V. **Lump Sum Distributions.** The section "Plans Subject to Code §417(e)" should be expanded to include a discussion of court cases that support alternate views, remove a potentially misleading statement regarding cash balance lump sum payments, and discuss responses to concerns raised about Method B.

VI. **Disclosures**. The Exposure Draft should encourage actuaries to disclose benefit determination and regulatory uncertainties known to the actuary, the financial implications of such uncertainties, and if the actuary is relying on outside counsel or the plan administrator for plan document and/or regulatory interpretations.

Discussion of Recommendations

I. **Scope.** A list of items beyond the current scope of the Exposure Draft is included on page 39. Although it is necessary to limit the scope of the Exposure Draft so that the Exposure Draft can be completed and issued, discussion of some of the excluded issues is integral to an actuary's understanding of the lump sum calculation, target liability determination, and other valuation topics considered in the Exposure Draft. To omit discussion of those issues fails to present a sufficiently complete, accurate view of the covered topics.

ACOPA recommends that the scope of the Exposure Draft be expanded to include presentation of different points of view on Code §411(a)(9) and Code §415. For example, the following analysis could be inserted on page 10 of the Exposure Draft, before the final paragraph:

> **Code §411(a)(9):** Code §411(a)(9) provides that the benefit payable at normal retirement age cannot be less than the benefit payable at any earlier retirement age. In a traditional defined benefit plan, the meaning of this requirement is straightforward. If normal retirement age is 65, and if participant A could retire at age 62 with a fixed monthly benefit of $1,000 per month in the normal form of payment, the fixed monthly benefit payable in the normal form at normal retirement (age 65) cannot be less than $1,000 per month.
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> If the plan is a VAP and the participant had retired at age 62, the $1,000 early retirement benefit would subsequently have been adjusted for investment earnings above or below the hurdle rate. There is no specific guidance from IRS on whether the protected §411(a)(9) benefit is $1,000, or $1,000 with adjustments for investment earnings above or below the hurdle rate. If the answer is that the protected §411(a)(9)

benefit is the adjusted benefit, §411(a)(9) does not, in and of itself, affect whether a VAP is a "pure" VAP. Proponents of this view hold that adjustments for investment earnings above or below the hurdle rate are part of the accrued benefit and thus cannot be separated from the benefit amount itself. Therefore, these adjustments should be included as part of the structure and form of any preserved early retirement benefit. However, if the protected §411(a)(9) early retirement benefit is $1,000 per month without investment adjustments before actual retirement age, then Code §411(a)(9) introduces an element of impurity to every VAP. Proponents of the unadjusted preserved benefit position argue that the law and regulations do not allow for any pre-retirement adjustment in the amount of the preserved accrued benefit. The actuary's interpretation of Code §411(a)(9) thus is critical to the determination as to whether or not a VAP subject to Code §411(a)(9) can be a "pure" VAP.

Code §415. If a VAP is subject to Code §415 and provides benefits that are high enough to be capped by the Code §415 limit, the plan may not be considered a "pure" VAP.

II. Valuing Variable Annuity Plans. As a basis for asserting that variable annuity plans should be discounted using the hurdle rate, the Exposure Draft (page 17) states the following:

> "Although few, if any, plans would be regarded as pure variable annuity plans, many plans deviate only modestly from the pure variable model. Accordingly, an appropriate starting point for valuing these plans may be the pure variable model, modified as necessary to capture the cost of the deviation from the pure variable design."

The Exposure Draft does not include any empirical data to support the contention that many VAPs are close to the pure model. Neither does the Exposure Draft include any analysis to support the assertion that the financial consequences of common deviations are modest. Because its conclusions hinge on these suppositions, the Exposure Draft would be greatly bolstered by the inclusion of empirical data and analysis to support this approach.

Small plan design changes can lead to large changes in a plan's liability. Without further detailed analysis, it is difficult to conclude that the appropriate starting point is the pure design. In fact, without this analysis, a reader may conclude the exact opposite of the assertion – in the absence of data and analysis, expected cash flows should be discounted at an independent discount rate because starting with the pure variable model may be a gross oversimplification.

If this data on plan design does not currently exist, this data could be developed through plan sponsor or practitioner surveys. In the alternative, this data could be developed by reviewing public IRS determination letter filings or public company financial statements.

ACOPA recommends that

- Empirical data be included to support the assertion that "many plans deviate only modestly from the pure variable model."
- Analysis be included to show that common deviations from the pure variable annuity results in modest financial differences.

III. **Private Sector Financial Accounting.** ASC 715-30-35-42 states that each significant assumption should be chosen explicitly as the best estimate for that particular assumption. The financial accounting standards do not contemplate an implicit approach to assumption setting where two or more significant assumptions are chosen so that the result in totality is reasonable. Proposed Method 1 appears to be making an implicit assumption choice regarding the discount rate and the expected return on assets by setting them both equal to the hurdle rate, instead of choosing the best estimate for each assumption.

Additionally, ASC 715-30-35-44 states that the discount rate determination will be separate from the return of asset assumption unless the plan's assets are invested in high quality zero coupon bonds matching the plan's expected cash flows.

ASC 715-30-35-1 allows for estimates when they do not produce materially different results than more precise calculations and this approach reduces the cost of applying the standard. In some cases, this may justify the use of Method 1. However, it is not clear that Method 1 will produce a similar result to precise calculations in all cases.

In contrast, potential support for Method 1 could be found in the minutes from the March 3, 2004 Financial Accounting Standards Board Meeting. In this meeting, the Board adopted a hybrid approach under which cash balance plans with market-related interest crediting rates are to be valued by reference to participants' account balances. While some of the relevant considerations would also apply to VAPs, potential differences also exist. In particular, the Board's logic in using the account balance is based upon the participant's ability to elect the notional account balance, while the analogous VAP construct is based on valuation concepts. Second, the Board did not comment on the selection of an expected rate of return assumption, while Method 1 contemplates both the discount rate and expected rate of return being set to the hurdle rate.

ACOPA recommends that the private sector financial accounting section of the Exposure Draft be expanded to include a more robust discussion harmonizing Method 1 to financial accounting standards.

IV. Single Employer Private Sector Funding. The Exposure Draft states, in the first paragraph under "Single-Employer Private Sector Funding" on page 20, that valuation of VAP benefits at the hurdle rates assumes level future benefits. The Exposure Draft continues as follows: "…discounting a level annuity with the [full yield curve] or segment rates would produce a present value different from the amount needed to fund the promised benefits. Therefore, it is necessary to make an assumption regarding the

future change in benefit amounts." In fact, while it is true that the valuation actuary must make assumptions regarding the future change in benefit amounts under a VAP, it is not true that such assumptions must be made because the results of the present value calculation differ from a particular numerical result or in any way arrive at a certain present value. Such assumptions must be made because Treasury regulation §1.430(d)-1 requires it.

Treasury regulations §1.430(d)-1(b)(2) defines "funding target" to be based on the present value of all benefits earned under the plan associated with prior service. Present value is a defined term under these regulations, and is determined under §1.430(d)-1(b)(4) as a three-step process. First, "the amount of that benefit" is calculated. Second, this benefit amount is multiplied by the probability of payment at a future date. And third, this product is discounted back to the valuation date using the appropriate interest rate under §1.430(h)(2)-1. No consideration is given in this process as to whether the resulting liability matches the amount needed to fund the promised benefit.

A. In the section "EROA Consistent with Discount Assumption", we note the following:

1. The first two paragraphs of this section continue to link assumptions and liability results. Here the Exposure Draft asserts that whether the resulting target liability is greater or lesser than the amount needed to fund plan benefits, or whether funding on this basis will result in inadequate or excessive assets, should influence the assumptions with regard to expected future investment adjustments to plan benefits. But the Treasury regulations provide no such linkage. What the regulations do provide is two specific situations in which the target liability will clearly not match the amount needed to fund plan benefits. The first is the valuation of lump sums subject to Code §417(e), for which the annuity substitution rule will result in either insufficient or excessive funding for promised benefits. The second is the valuation of so-called "market-rate" cash balance plans.

   Cash balance plans have specific valuation rules imposed by these regulations. These rules are stated in §1.430(d)-1(f)(5)(i) and then demonstrated in Example 13 of §1.430(d)-1(f)(9). Given this level of regulatory specificity, it is worth applying the actuarial principles enunciated in the Exposure Draft to market-rate cash balances plans to see whether differences arise. And because this guidance exists for cash balance plans but not for VAPs, it is worth exploring whether the underlying principles governing this guidance might apply to both types of plans.

   Consider a cash balance plan with an interest credit equal to the investment return on plan assets. With the exception of the preservation of capital requirement (the requirement that any distribution cannot be less than the sum of principal credits), benefits under the cash balance plan are fully indexed to the return on the plan's assets. This is similar to a VAP with a variation as described on page 9 of the Exposure Draft.

Now apply the principles under the first of the two valuation options, as articulated on page 21 of the Exposure Draft: "If the discount rate and the return assumption are different, the amount will be either inadequate or excessive to provide the future cash flows and thus would not meet the typical definition of a present value. In other words, to be consistent with the typical definition of a present value, the discount rate and the assumed return on asset are considered the same assumption." Under this first valuation option from the Exposure Draft, such a cash balance plan would be valued by assuming that future interest crediting rates would be consistent with the discount rate (with adjustments for the preservation of capital variation). This would result in a funding target somewhat above the sum of cash balance accounts (the overage due to reserving for the preservation of capital).

The guidance under the §1.430(d)-1 Treasury regulations is clear that (i) participants' cash balance accounts should be projected to the expected payment dates using the actuary's best estimate of anticipated future interest crediting rates, and (ii) these projected future payment amounts should be discounted using §1.430(h)(2)-1 interest rates (full yield curve or segment rates). In Example 13, cash balance accounts are projected using an assumed future interest crediting rate of 7.00% and are discounted using a segment rate of 5.07%. This is inconsistent with the principles associated with the first valuation approach presented in the Exposure Draft.

These inconsistencies in the §1.430(d)-1 Treasury regulations with the "EROA Consistent with Discount Assumption" approach discussed in the Exposure Draft are significant enough to warrant mention. **ACOPA recommends** that a full discussion of these regulations be added to the Exposure Draft. The Exposure Draft should also include a statement that the inconsistency between this guidance and the "EROA Consistent with Discount Assumption" casts doubt on the concept that the present value should equal the current amount needed to fund the promised benefits, the theoretical lynchpin of this approach. Without a full discussion of this guidance and its implications, the Exposure Draft implicitly concludes that Treasury would stipulate a project-and-discount approach for one type of indexed plan (cash balance plans) but would endorse a separate and contradictory approach for another type of indexed plan (VAPs). ACOPA is not comfortable with this conclusion.

2. The fourth observation in this section also bears comment. It states that "Liabilities and assets growing at the same rate precisely meet the actuary's best estimate of anticipated experience under the plan." This is circular reasoning. Only because the actuary would take this first valuation approach would liabilities articulate with plan assets and thus the actuary's expectation would be fulfilled. If the actuary instead considered the second valuation approach, and selected assumptions about future investment adjustments that were independent of the

discount rates, the plan's liability would be expected to develop in a manner different from future assets values. **ACOPA recommends** that this observation be corrected to state that "*Benefits* and assets growing at the same rate precisely meet the actuary's best estimate of anticipated experience under the plan." Then, the Exposure Draft should also note, this corrected observation supports either valuation approach.

3. Also in this section, the statement "An assumption of an asset return different from the discount rate will produce gains or losses each year" is another example of circular reasoning. Consider Example 13 in the §1.430(d)-1 regulations. If assumptions are exactly realized in the future, the target liability in this Example will grow, without gains or losses, to the projected account balance expected to be paid at the time of distribution. This is true even though the assumption of an interest credit (read: plan asset return) is different from the discount rate. The quoted Exposure Draft statement is true only if, as required under the first valuation approach, the asset return assumption is set equal to the discount rate. Thus, the Exposure Draft statement is equivalent to stating that "if we assume the asset return assumption must equal the discount rate, then the asset return assumption must equal the discount rate." This amounts to a tautology. **ACOPA recommends** that it be stricken.

4. Finally in this section, we believe it is worth noting a particular implication of this first valuation approach: that the PBGC premium liability would employ a mathematically different set of assumptions than the target liability. This is because, by setting the assumed future investment adjustments equal to the discount rate, the assumed future investment adjustments will vary mathematically depending on the set of discount rates used. This could be understood to violate the PBGC's methodology for determination of the premium funding target, under which all assumptions other than the discount rate must be "the same" (ERISA §4006.4(b)(2)). Whether the PBGC would view mathematically different assumptions for the future investment adjustments as consistent with, or in violation of, their regulations would appear to be an open question. Given the large and escalating nature of PBGC variable premium rates, this consideration could be a significant factor in determining valuation methodology. **ACOPA recommends** that the Exposure Draft be expanded to include the above discussion.

B. In the "EROA Independent of Discount Assumption" section, the Exposure Draft states on page 25 that "gains and losses will be generated when the actual return equals the expected return." This is false. If expected investment returns are exactly realized, and all other assumptions are realized as expected, then no gains or losses will be generated under this method. Please see Example 13 in the §1.430(d)-1 regulations for a demonstration of this fact.

In this same paragraph, the Exposure Draft states that "PPA generally eliminated the ability for single-employer plans to determine the liability based on expected returns." This is also false (if true, it would serve as a great surprise to the many actuaries currently making such assumptions to value "market-rate" cash balance plans and plans with return-based cost-of-living adjustments). PPA eliminated the ability for single-employer plans to determine the liability based on a discount rate determined by reference to expected returns on plan assets. But the regulations under PPA (§1.430(d)-1) provide for the actuary to make an assumption as to any aspect of the plan's benefit subject to valuation necessary to determine the future expected value of that benefit at the expected time of payment. This includes assumptions about future plan asset investment returns for both VAPs and cash balance plans, to name two such examples. **ACOPA recommends** that this section be revised to reflect the above discussion.

V. Lump Sum Distributions. ACOPA has the following recommendations for improvement with regard to the "Plans Subject to Code §417(e)" section of the Exposure Draft beginning on page 34, as follows:

A. The first full paragraph on page 35 of the Exposure Draft indicates there is no official guidance on the question of determining the Code §417(e) minimum lump sum distribution amount for a VAP. Although there is no formal guidance from IRS or Treasury, an actuary working with a VAP should be aware of court cases that would appear to be relevant to the Code §417(e) calculation for a VAP. Williams v. Rohm and Haas Pension Plan (7th Circuit, 8/14/2007) addressed the calculation of lump sum payments from a plan that provided cost-of-living adjustments to retirees receiving monthly annuity payments. The plan document defined the plan's "accrued benefit" as the normal retirement benefit based on a fixed age and service formula without regard to the COLA. Mr. Williams' lump sum payment was based on the value of that accrued benefit (again, without regard to the COLA). The issue became whether ERISA overrode the strict terms of the plan. The judge concluded that the accrued benefit included the COLA, and that lump sum payments must incorporate the value of future increased payments.

This court case is relevant to VAPs in two respects. First, Williams v. Rohm and Haas reaffirms that the operation of a plan under its strict terms may not be sufficient to provide the full value of benefits to participants. Courts or other governing bodies may discover deficiencies in the plan's stated terms. This may ultimately be relevant to those VAPs whose terms describe the determination of lump sum distribution

values under Method A.

Second, Williams v. Rohm and Haas affirms the principle that future adjustments in benefits must be reflected in current lump sum values. In this particular case, future adjustments take the form of a COLA. For VAPs, future benefits are adjusted based on future investment performance via reference to a hurdle rate. These two sets of adjustments seem quite comparable with regard to the principle affirmed in this case.

If this second principle – that future benefit adjustments must be reflected in the lump sum distribution value – applies to VAPs, then the Exposure Draft discussion of Method C ("No Change in Nominal Benefit") may need to be altered. In particular, to the extent that Method C derives from the proposition that the participant forgoes the value of future benefit adjustments by electing the lump sum, it seems appropriate to state how this concept would be in contradiction to the principle affirmed in Williams v. Rohm and Haas.

B. Berger vs Xerox (7th Circuit, 8/1/2003) is also relevant to the determination of lump sum distribution values under a VAP. This is a "whip-saw" case involving the application of Code §417(e) valuation methodology to cash balance plans. Like VAPs, cash balance plan sponsors and their advisors struggled with the application of minimum lump sum present values under Code §417(e). While this conflict was resolved prospectively for cash balance plans by the passage of PPA, the resulting court cases are still relevant to VAPs.

   Under the stated terms of the Xerox cash balance plan, certain lump sum values were to be determined by assuming that future cash balance interest crediting rates were equal to the applicable lump sum discount rates. This resulted in lump sum values equal to the participant's cash balance account.

   The parallels between the Xerox design and VAPs are clear. Each plan by its terms stipulates that, for lump sum purposes, projected future benefit adjustments are to be calculated using the discount rate(s) employed to determine the present value of those future benefits. And for each plan, the resulting lump sum distribution value is a pre-determined amount independently determined from the project-and-discount methodology. These two parallels are neatly summarized in the Appeals Court decision: "The Xerox plan computed the lump sum differently. Instead of adding future interest credits to the departing employee's cash balance at the plan's future-interest-credits rate, it added interest at a rate exactly equal to the discount rate... The two rates, the interest rate and the discount rate, being identical, canceled, with the result that the lump sum … was his cash balance…" It is highly relevant to VAPs and their advisors that the Appeals Court did not accept this argument (which Judge Posner called "emptily semantic") and ruled against Xerox.

C. The second full paragraph on page 36 of the Exposure Draft appears to argue that it is appropriate for VAPs not to incorporate a premium for potential future investment returns because market-based cash balance plans do not have to pay such a premium.

This is misleading. The law was changed by PPA to allow cash balance plans to pay out the account balance, but this change in the law was strictly limited to cash balance arrangements. In fact, before the passage of PPA, the ability to pay out the account balance from cash balance plans was at best not clear, and litigation related to these lump sum payments, such as the Xerox case discussed above, resulted in courts concluding that payment of the account balance was not a sufficient lump sum value.

ACOPA recommends that the Exposure Draft point out that PPA changed the rules solely for cash balance plans, include a discussion of the Xerox case, and indicate that some actuaries believe the logic of the Xerox case should apply to the determination of lump sum payments from a VAP.

D. The first full paragraph on page 36 of the Exposure Draft, second sentence, discussing the Method A approach to the lump sum determination, states "The participant can invest in the same or similar manner as the plan assets were invested, and thereby achieve the same level of adjustment relative to the hurdle rate that they would have had if they had left their assets in the plan." This same sentiment is expressed in the discussion of Method C in the paragraph beginning at the bottom of page 37. In fact, participants who take a lump sum distribution of benefits from a plan generally cannot invest in the same investments as those in which plan assets are invested. Large plans with substantial asset pools are offered investment opportunities not available to the general public, as well as investments with minimums that exceed most lump sum distribution amounts. **ACOPA recommends** that this statement be deleted wherever it appears.

E. **ACOPA recommends** that the discussion of Method B, beginning on page 36 of the Exposure Draft, be modified to indicate that this method would address any concerns raised by the Xerox decision. In addition, the discussion on page 37 offers a list of concerns raised by critics of the method, but does not address those concerns. **ACOPA recommends** that responses be provided to the concerns raised on page 37 as follows:

- If the benefit indexation is not consistent with the discount rate, the lump sum will either fall short or exceed the present value of the annuity benefits. *Response:* This concern assumes the appropriate value of the annuity is the value at the hurdle rate. For benefits subject to Code §417(e), the discount rates are statutory, and are not necessarily reasonable as assumed future investment returns.

- The expected return on assets is subject to judgment and may not meet the requirement of being definitely determinable. *Response:* The plan should specify a reasonable assumption, or methodology for determining the assumption, so it will be definitely determinable.

- Asset allocation is generally controlled by plan sponsor. By changing asset

allocation, the sponsor has influence over the amount of the lump sum that is paid. *Response*: It is true that asset allocation will affect benefits ultimately paid from a VAP, whether in lump sum or annuity form. Fiduciary rules apply, and should mitigate gaming. A formulaic assumption related to actual investment return could adjust for changes in asset allocation.

- More aggressive portfolios are subject to higher risk, the cost of which is not reflected in the lump sum. Participants benefit from the riskier assets but receive the benefit immediately and are not subject to the risk. The price that financial markets would put on risk would exactly offset the premium built into the lump sum calculations. *Response*: If the cost of the risk offset the premium, the plan would not be taking the risk. The expectation must be that the higher return will exceed the cost of the risk.

- Code §417(e) bases lump sum calculations on published rates, not estimates made by actuaries or plan sponsors. *Response:* Although the discount rates and mortality table are proscribed, other possible assumptions, such as COLA adjustments, are not. (Note the Williams v. Rohm and Haas and Xerox cases referenced above.)

- This method involves a degree of discretion and variation from plan to plan that mandated assumptions were intended to eliminate. *Response:* The same situation occurs with COLAs. Variation should occur where benefits differ.

F. On page 37 of the Exposure Draft, the third paragraph under the discussion of Method C presents the argument that a participant who voluntarily elects the lump sum "elects to forgo future indexation of the periodic benefit". **ACOPA recommends** the Williams v. Rohm and Haas case be noted as reason for concern about this assertion.

VI. Encourage disclosure of uncertainties relating to valuation of VAP liabilities. In order to calculate a lump sum or the target liability, the actuary must first identify the benefit to be valued. To determine the benefit to be valued, the actuary should review the plan document and the relevant regulatory framework. To the extent that the plan document and regulatory framework are unclear (or the actuary relies on the opinion of an attorney or the plan sponsor), the actuary should clearly disclose the benefit the actuary valued and the known sources of plan interpretation and regulatory uncertainty.

Actuaries should not be expected to practice law, but an actuary practicing in an emerging area should have a working knowledge of possible interpretations of the relevant law and should be prepared to disclose those interpretations to the plan administrator and their advisors as it relates to the actuarial calculations. As an example, if an actuary has two clients with similar plans each with outside legal counsel, and the legal counsel for each of those clients takes the exact opposite view with respect to a regulatory issue, the actuary has knowledge that there is regulatory uncertainty with respect to that issue. If

possible to do so without disclosing confidential information, the actuary should disclose the risk of regulatory uncertainty and the financial implications to clients. This is consistent with the increasing focus in actuarial professional standards on risk disclosures.

Disclosure of regulatory uncertainty protects the user of actuarial reports because the user has greater clarity about the scope of the actuary's calculations and whether there is uncertainty on how the calculations should ultimately be performed. Rigorous disclosure additionally may protect actuaries from the perception they are fiduciaries or engaging in the unauthorized practice of law.

There is a reputational risk to actuaries when clients and regulators perceive that actuarial consultants are designing plans anticipating changes to the law instead of complying with existing law. This reputational risk often materializes years later. For example, some plan sponsors and regulators may perceive that actuarial consultants sold certain cash balance plan designs that were not wholly consistent with existing law at the time the plans were sold and that those risks were known to the actuary and not fully disclosed to the client. Rigorous disclosure of known VAP regulatory risks is needed to protect the reputation of the profession.

ACOPA recommends that:

- The Exposure Draft should be updated to encourage actuaries to disclose benefit determination and regulatory uncertainties known to the actuary and the financial implications of such uncertainties.
- The Exposure Draft should be updated to encourage actuaries to disclose if they are relying on outside counsel or the plan administrator for plan document or regulatory interpretations.

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These comments were prepared by a task force of the ASPPA College of Pension Actuaries. Please contact Judy A. Miller, MSPA, Executive Director of ACOPA, at (703) 516-9300 if you have any comments or questions on the matters discussed above.

Thank you for your time and consideration.

Sincerely,

/s/	/s/
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