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IV. Oversight and Regulation

Introduction

1863 The effectiveness of a profession's disciplinary process can have a significant impact on
1864 its credibility and on its success at meeting the public's needs. Where oversight and
1865 discipline are effective, poor-quality work is more likely to be identified and addressed.
1866 Professionals are given an incentive to maintain and update their skills, reducing the
1867 likelihood of poor-quality work. On the other hand, where the oversight and disciplinary
1868 processes of a profession are lax, poor-quality work may go unnoticed for a long time.
1869 Given the long-term nature of the work actuaries do, this is a distinct danger. When
1870 ultimately discovered, the profession's credibility is damaged. Also, users aren't always
1871 qualified to judge the quality of actuarial work, which makes it particularly critical for the
1872 actuarial profession to have an effective system of oversight and regulation.

1873

1874 The system of oversight and regulation of actuaries in the United States consists of
1875 multiple elements:

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- Direct government oversight in the case of enrolled actuaries;
- Indirect oversight by state insurance regulators, through their regulation of insurance companies, including review of insurance company reserves and rates;
- Oversight and discipline provided by a combination of the Actuarial Board for Counseling and Discipline and the five membership organizations.

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Direct Government Oversight

1884 Enrolled actuaries (EAs) are the only actuaries subject to direct governmental regulation
1885 in the United States. An EA is regulated by the Joint Board for the Enrollment of
1886 Actuaries (JBEA), which was established pursuant to Sec. 3041 of the Employee
1887 Retirement Income Security Act of 1974 (ERISA). The Joint Board is composed of five
1888 members, three appointed by the Secretary of the Treasury and two appointed by the
1889 Secretary of Labor. In addition, the Pension Benefit Guaranty Corporation has one
1890 representative with no voting power.

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The Joint Board qualifies individuals to perform services under ERISA. It also conducts disciplinary proceedings. In general, there are three types of misconduct that may subject an enrolled actuary to disciplinary action. These are (1) misconduct during the performance of actuarial services under ERISA; (2) misconduct related to the enrolled actuary's federal tax return; and (3) other misconduct not related to the performance of actuarial services under ERISA.

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As indicated, enrolled actuaries are the only actuaries currently subject to direct government oversight, via licensure. Interestingly, the American Academy of Actuaries was originally formed in 1965 to pursue a federal charter. Had that effort been successful,

1900 it would have provided broader federal recognition of the actuarial profession, not unlike
1901 what Canadian actuaries currently have. It is possible that creation of an optional federal
1902 charter for insurance companies would create another opportunity for broader federal
1903 recognition of the profession, via either direct supervision or a system of indirect federal
1904 supervision (similar to what has evolved at the state level).

1905

1906 **State Regulatory Oversight**

1907 State insurance regulators conduct regular financial examinations of insurance
1908 companies. The accreditation program of the National Association of Insurance
1909 Commissioners (NAIC) requires states to use actuaries in evaluating the adequacy of
1910 insurer reserves. In some lines of insurance (predominantly casualty and health), state
1911 insurance departments also review the rates and supporting loss data. These reviews
1912 provide some indirect oversight on the work of the company's actuary. Where that work
1913 is inadequate, the regulator may request that additional work be done.

1914

1915 In the case of life insurer reserve opinions, the NAIC's Model Actuarial Opinion and
1916 Memorandum Regulation (AOMR) allows the regulator to disqualify an actuary from
1917 filing future opinions under certain circumstances. The regulator must give proper notice,
1918 hold a hearing, and find that the actuary has, for example, demonstrated incompetence or
1919 untrustworthiness or submitted an opinion that was rejected for failing to meet the
1920 standards of the Actuarial Standards Board. The Actuarial Opinion instructions for
1921 property and casualty (P/C) companies, however, found in the Annual Statement
1922 Instructions, do not contain a similar provision.

1923

1924 Regulators typically report having seen instances of poor-quality actuarial work at times
1925 in their careers. Given the nature of regulation, which tends to deal with problem
1926 situations, regulators are among those most likely to observe substandard work. In most
1927 areas of actuarial work, however, regulators do not have the explicit authority to
1928 disqualify actuaries that is found in the AOMR. This would include, for example,
1929 property/casualty loss reserve opinion (mentioned earlier), certifying nonforfeiture
1930 benefits, and developing property/casualty or health rate filings.

1931

1932 Regulators also report some frustration with their ability to address poor-quality actuarial
1933 work. It appears that they rarely, if ever, use their regulatory authority to disqualify a life
1934 actuary from doing reserve opinions. In the case of property/casualty actuaries, they rely
1935 on the profession's self-disciplinary processes to disqualify an actuary. However,
1936 regulators are generally reluctant to submit complaints to the ABCD (discussed below)
1937 because it might have a potentially negative impact on pending litigation or on the
1938 regulatory process, or possibly because it might involve them in litigation.

1939

1940 Regulators view the oversight and regulation of actuaries as becoming increasingly
1941 important in light of the movement to a more principles-based valuation system in the life
1942 insurance industry. Given the increased use of judgment in reserving and capital
1943 requirements under a principles-based approach, the competence of the valuation actuary
1944 will become increasingly important. Several regulators have suggested that the
1945 profession's current self-regulatory processes do not give them sufficient confidence that
1946 poor-quality actuarial work will be identified and addressed. The NAIC and the

1947 American Academy of Actuaries are considering a system of mandatory external review
 1948 of specific actuarial work (e.g., reserving) as a possible solution.

1949

1950 **Self-Regulation by the Profession**

1951 Oversight and discipline by the profession are currently the combined responsibility of
 1952 the ABCD and the five membership organizations. Recognizing that the majority of
 1953 actuaries (approximately 70 percent) belong to more than one membership organization,
 1954 the five membership organizations created the ABCD in 1992 to reduce duplication in the
 1955 investigation of a potential violation of the Code of Professional Conduct. The ABCD
 1956 was created under the bylaws of the American Academy of Actuaries but is quasi-
 1957 independent of the Academy. The Academy provides staff support, and the Academy
 1958 board oversees the ABCD budget. The ABCD board is appointed by the presidents and
 1959 presidents-elect of the five membership organizations.

1960

1961 The ABCD has authority to consider and investigate complaints or other information
 1962 suggesting possible violations of the Code. While most cases come to the ABCD's
 1963 attention by a complaint, the ABCD may also open a case on the basis of other
 1964 information, such as news reports of litigation against an actuary or the imposition of
 1965 federal discipline. (The ABCD has recently begun monitoring federal discipline against
 1966 enrolled actuaries.) In addition to making recommendations for discipline, the ABCD
 1967 may also counsel actuaries concerning their activities, respond to requests for guidance,
 1968 or mediate to resolve issues.

1969

1970 The ABCD does not itself impose discipline. Rather, it makes recommendations for
 1971 disciplinary action to the membership organizations. A fundamental principle of the
 1972 current structure is that the authority to discipline members rests exclusively with the
 1973 membership organizations. One complicating factor is that possible disciplinary actions
 1974 vary across the different organizations. For example, some organizations permit private
 1975 reprimands, while others (the Academy and the Society of Actuaries) do not. This has
 1976 limited the ABCD's ability to use private reprimands and may have led to an increased
 1977 use of counseling as a solution to possible Code violations.

1978

1979 The ABCD does not commonly recommend discipline, and most of the ABCD's cases
 1980 are either dismissed or resolved with counseling. (See Table 4.1 below.) Excluding
 1981 requests for guidance, between 1992 and 2005, the ABCD closed 279 cases,
 1982 recommending public discipline in 13 and private reprimand in two. In part, this may be
 1983 because of the inability to use private reprimands in some cases (see above). It also
 1984 appears, however, that the ABCD generally views education as a preferable way to
 1985 resolve poor performance in many situations.

1986

Table 4.1
ABCD Cases Completed
Inception Through 2005

Outcome	<u># cases</u>		<u>Excluding Requests For Guidance</u>
Dismissed	156	24.30%	55.91%

Dismissed w/ guidance	57	8.88%	20.43%
Counseled	40	6.23%	14.34%
Mediated	11	1.71%	3.94%
Recommended private reprimand	2	0.31%	0.72%
Recommended public discipline	13	2.02%	4.66%
	279	43.46%	100.00%
Replied to requests for guidance	363	56.54%	
	642	100.00%	

1987

1988 Some ABCD cases are not resolved for many years because they are in litigation. Where
1989 litigation is involved, the ABCD will generally agree to defer the investigation, provided
1990 the actuary files regular reports with the ABCD and agrees not to sign onto a settlement
1991 that limits the ABCD’s ability to access the information it needs for its investigation.

1992

1993 Once a recommendation for discipline is made to the membership organization(s), those
1994 organizations follow their own internal processes. These may result in different
1995 outcomes. There has been at least one instance where the ABCD recommendation in a
1996 specific case was accepted by some organizations and rejected by others. The
1997 determination of whether to make the information public is left to the membership
1998 organizations, and the ABCD maintains confidentiality with respect to its investigations
1999 and deliberations. Comments from the CRUSAP survey and interviews suggested that
2000 many actuaries believe the membership organizations do not release sufficient detail on
2001 the nature of the actions that have resulted in discipline.

2002

2003 The ABCD has done extensive outreach and education in recent years, publishing case
2004 studies and other educational material. The ABCD has also received praise for its work
2005 responding to requests for guidance (see the report of the 2002 ABCD Review Task
2006 Force). Between 1992 and 2005, the ABCD responded to 363 requests for guidance. In
2007 some cases, where permitted by the requesting actuary, the ABCD has published redacted
2008 versions of the requests for guidance and its replies. This activity is helpful to the
2009 profession in understanding how the ABCD views the Code and the various Actuarial
2010 Standards of Practice.

2011

2012 An extensive review of the ABCD was undertaken in 2002. An ABCD Review Task
2013 Force was appointed by the Council of Presidents, a body composed of the presidents and
2014 presidents-elect of all the North American actuarial organizations. The ABCD Review
2015 Task Force, chaired by Daniel J. McCarthy, reported its recommendations in July 2002.
2016 The Task Force’s overall conclusion was that the operation of the ABCD was
2017 fundamentally sound. It did identify some areas for improvement. Recommendations
2018 were made to improve timeliness, communications with affected parties, and the
2019 investigation process. The ABCD Review Task Force was particularly impressed with the
2020 ABCD’s responses to requests for guidance and urged the ABCD to more widely
2021 publicize the availability of this service. The Task Force encouraged the ABCD to
2022 continue to educate the profession, using actual complaints and requests for guidance,
2023 appropriately redacted to preserve confidentiality. Finally, the Task Force commented
2024 that it was the “predominant view of the ABCD members” that it would be helpful if all

2025 organizations had the private reprimand option available. Most of the ABCD Review
2026 Task Force’s recommendations have been implemented. However, although the ABCD
2027 supported making the private reprimand option available in all organizations, this has not
2028 been done.

2029

2030 **Analysis**

2031 Our review of the profession’s systems for oversight and regulation identified several
2032 issues.

2033

2034 **Learning About Possible Violations of the Code and Standards**

2035 Most of the ABCD’s cases are initiated by complaints. Between 1992 and 2005, the
2036 ABCD closed a total of 279 cases (not including requests for guidance), or an average of
2037 20 per year. This yearly total amounts to approximately 0.125 percent of the actuaries
2038 practicing in the United States. While it is impossible to judge the process strictly by
2039 statistics, there is a widespread perception that the ABCD is not receiving complaints on
2040 many situations involving Code violations. In the 2005 Professionalism Standards
2041 Survey, conducted in March 2005 by the Academy’s Committee on Professional
2042 Responsibility, 29 percent of the respondents indicated they had been aware of an
2043 apparent breach of professional standards, but 96 percent of those individuals had not
2044 reported the matter to the ABCD.

2045

2046 State insurance regulators report in interviews, and anecdotally, that they are reluctant to
2047 file complaints with the ABCD for a variety of reasons, including the possibility of
2048 causing difficulties for future litigation in an insolvency or of further complicating the
2049 relationship with the regulated entity. According to the Joint Board for the Enrollment of
2050 Actuaries, there are many cases that never result in public discipline, but the Joint Board
2051 is not permitted to notify the ABCD about those cases. In the view of the ABCD, the
2052 most significant issue facing the profession with respect to the ABCD’s role is that
2053 “regulators, actuaries, and others are not reporting many of the apparent violations of
2054 which they may be aware.”

2055

2056 Precept 13 of the Code of Professional Conduct requires an actuary to report another
2057 actuary’s apparent, unresolved material violation of the Code to the ABCD, except where
2058 the disclosure would be contrary to law or would divulge confidential information. An
2059 apparent violation is unresolved if the actuary observing the violation decides not to
2060 attempt to resolve it with the actuary or any attempt at resolving it is unsuccessful in the
2061 view of the observing actuary. Here again, there are limits to what is reported.

2062 Confidentiality protections in litigation may prevent an actuary from reporting a
2063 suspected Code violation. Furthermore, some actuaries report a reluctance to make
2064 complaints for a variety of reasons, including a lack of clarity on when a complaint is
2065 appropriate. Awareness about the ABCD also appears to be a problem, in spite of the
2066 ABCD’s efforts at education and outreach. Based on the results of Academy
2067 professionalism surveys conducted in 2000 and 2005, it appears that the general level of
2068 awareness of the ABCD declined slightly between 2000 and 2005, as indicated in Table
2069 4.2.

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Table 4.2
Awareness of ABCD's Roles in 2000 and 2005

	2005	2000
Investigating complaints	93%	98%
Confidential counseling for actuaries	88%	88%
Recommending disciplinary actions	88%	94%
Offering confidential guidance	83%	79%
Serving as dispute mediator	61%	67%

American Academy of Actuaries professionalism surveys

To summarize, both regulators and actuaries report a reluctance to file (or legal impediments to filing) complaints with the ABCD. This raises concerns about a reliance on complaints to identify possible instances of misconduct. A self-regulatory process cannot be effective if it is unaware of problems in the profession. Given the long-term nature of the risks in the insurance industry and the inability of many users to assess the quality of work, it is particularly important that the profession be proactive in identifying violations of the Code. It will become increasingly important in a principles-based regulatory regime.

CRUSAP survey respondents and interviewees, as well as individuals concerned with professionalism issues, have suggested several approaches to expanding the utilization of the ABCD:

1. Increased outreach to actuaries and regulators. This could involve further education on the role of the ABCD, the process for filing a complaint, when to file a complaint, etc. Given the lack of understanding of the ABCD by many regulators, outreach to regulators may be particularly useful. However, outreach alone is unlikely to resolve the legal issues that prevent a complaint from being filed, such as confidentiality requirements in litigation.

2. Increased follow-up where discipline or counseling has been imposed. Currently, there is no follow-up when counseling is imposed; the actuary's work is not reviewed again unless another complaint is received. This may be appropriate for some complaints, such as those involving a particular billing conflict. In other cases, however, additional follow-up (e.g., periodic external review) would increase the ABCD's confidence that the counseling had had its desired effect. This could be the case, for example, where the counseling was imposed because of concerns about the quality of the actuary's work. There are implementation issues that need to be resolved, such as how the additional review is done, who does it, and how it is funded.

3. Triggers for automatic reviews of an actuary's work. Establishing a system of automatic reviews would reduce the reliance on complaints. Examples of such triggers include an insurer insolvency or a significant change in a property/casualty insurer's loss

2117 reserves (recommended by the Casualty Actuarial Society’s Task Force on Credibility of
2118 the Actuary in May 2005). One CRUSAP survey respondent suggested the profession
2119 create a committee of actuaries to assist the NAIC or states in determining if there was
2120 evidence of actuarial misconduct in an insolvency. However, current state confidentiality
2121 protections would limit the ability to do that effectively. The Academy’s Council on
2122 Professionalism made such a proposal to the NAIC in 1994, but no action was taken.

2123

2124 While these options would reduce the reliance on complaints, they would also
2125 significantly increase the workload of the ABCD. This would be a challenge, particularly
2126 given that the board members serve as volunteers. Additional resources would need to be
2127 provided, and the triggers would need to be carefully and clearly defined to accomplish
2128 the objective with the available resources.

2129

2130 **4. Statutory changes.** As indicated, the ABCD’s access to information is limited in some
2131 cases by state and federal law. The Joint Board for the Enrollment of Actuaries is unable
2132 to share information with the ABCD. Under most states’ laws, information gathered
2133 during the course of a state regulator’s examination of an insurance company is
2134 confidential. State legislation to allow state insurance regulators to share confidential
2135 information with the ABCD, and federal legislation to permit the Internal Revenue
2136 Service and the Joint Board for the Enrollment of Actuaries to provide information to the
2137 ABCD, would improve the ABCD’s access to information.

2138

2139 This may be an opportune time to pursue changes to state legislation. The NAIC is
2140 currently revising the Property and Casualty Opinion Model law and developing a
2141 regulatory system for principles-based reserving in life insurance. In both cases, the role
2142 of the actuary in supporting state insurance regulation is clear, and the need for more
2143 effective communication between regulators and the profession’s disciplinary process in
2144 cases of actuarial misconduct seems equally clear. Legislation should also enable the
2145 confidential sharing of private reprimand information with regulators.

2146

2147 **5. Whistle-blower protections.** Finally, some observers suggested the need for stronger
2148 whistle-blower protections. The CRUSAP Task Force did not do a state-by-state analysis
2149 of whistle-blower protections, and the need for stronger protections is not clear. Different
2150 states have different laws, and the need for change cannot be determined without
2151 significant study and legal assistance.

2152

2153 **Credibility of the Process**

2154 The analysis identified some issues regarding the credibility of the profession’s
2155 disciplinary processes once a case is opened. Some actuaries responding to the CRUSAP
2156 survey supported an aggressive approach to misconduct and questioned the ABCD’s
2157 balance between counseling and recommendations for discipline, while others questioned
2158 the policy of delaying investigation during litigation. Some observers have questioned the
2159 consistency of ABCD decisions, arguing the ABCD used different interpretations of
2160 “conflict of interest” in different situations. Given the significant confidentiality
2161 protections that surround the activities of the ABCD, the ABCD is unable to respond
2162 adequately to these questions. Furthermore, the inability to release details about cases

2163 hampers the ABCD’s efforts to educate other actuaries using examples of actual
2164 misconduct.

2165
2166 The CRUSAP Task Force did not have access to confidential case information and is thus
2167 unable to provide its opinion on the balance between counseling and recommendations
2168 for discipline. It is difficult to make comparisons with other professions because of
2169 challenges in obtaining information, differences in the nature of the work, and differences
2170 in the membership. However, the number of cases resolved by the ABCD compares
2171 favorably with the number of cases resolved by the American Institute of Certified Public
2172 Accountants. (The ABCD closed an average of 20 cases per year between 1992 and 2005,
2173 excluding requests for guidance. This compares to a membership base of approximately
2174 18,000. The AICPA closed 201 cases in 2004, out of 334,635 members.) Furthermore,
2175 both organizations dismissed roughly 25 percent of the cases without taking any action. A
2176 notable difference is that the AICPA is more likely to publicly discipline a member. Of
2177 the 201 cases resolved by the AICPA in 2004, 67 (or one-third) resulted in the member
2178 being expelled or suspended. By contrast, since 1992, only 11 of 279 disciplinary cases
2179 closed by the ABCD resulted in public discipline. The CRUSAP Task Force does not
2180 necessarily view these statistics as indicating a weak disciplinary process. The CRUSAP
2181 Task Force also generally supports a bias toward counseling and private reprimands as
2182 preferable to public discipline unless there is strong evidence to the contrary — an
2183 opinion that appears to be shared by the ABCD.

2184
2185 As described earlier, the final decision regarding discipline is made by the separate
2186 membership organizations. Each organization has its own process and own options for
2187 discipline. Two organizations do not have a private reprimand option available. The
2188 individual membership organizations can, and have, rejected the ABCD’s
2189 recommendation in particular cases. Furthermore, when an actuary belongs to multiple
2190 organizations, the organizations may make different decisions regarding what discipline
2191 to impose. Given the existence of separate organizations and separate governance of each
2192 organization, this may be a reasonable outcome. However, it is likely to be confusing to
2193 those outside the profession and raises the potential for a loss of credibility where
2194 different organizations address a particular case of misconduct differently. Furthermore,
2195 given that the membership organizations make the decision on what information should
2196 be public, concern has been raised that they might issue inconsistent statements of the
2197 facts in cases involving public discipline.

2198
2199 The CRUSAP Task Force considered several issues related to the disciplinary process
2200 and its credibility.

2201
2202 ***1. Relationship to federal and state government.*** As described earlier, with the exception
2203 of enrolled actuaries, there is no system of direct governmental oversight of individual
2204 actuaries – a licensing system. State insurance regulators exercise a form of indirect
2205 oversight via their ability to disqualify an actuary from performing certain actuarial
2206 functions. However, this is currently limited to certain specific areas (e.g., life reserves).
2207 Given the significant role played by actuaries in the regulatory process, a stronger tie
2208 between regulators and the profession could be useful. One way to do this is to expand

2209 the ability of regulators to disqualify actuaries from performing regulatory functions,
2210 including, for example, property/casualty loss reserving and rate filings.

2211
2212 It has also been suggested that a more fundamental change in the regulatory structure of
2213 the profession should be considered — specifically, that requiring actuaries to be licensed
2214 would enhance the credibility of the profession. While that is worth further discussion,
2215 the initial view of the Task Force is that licensing, in and of itself, does not increase the
2216 credibility of the profession. Rather, it is the competence of its members along with the
2217 quality of the work that plays the major role in determining credibility. Furthermore,
2218 there are challenges to creating a licensing system, particularly in the current state-based
2219 insurance regulatory system. Multi-state licensing is an inefficient and burdensome
2220 process, and the state regulatory system has not yet found a way to offer a single license
2221 accepted by all states. It is important, however, that the profession continue to play a
2222 significant role in the regulatory process. Consideration should be given to whether a
2223 federal licensing system would be desirable if Congress enacts optional federal charter
2224 legislation.

2225
2226 **2. Transparency.** The lack of transparency in the ABCD’s operations, while problematic
2227 from the perspective of credibility, is also typical of an organization such as this. The
2228 Canadian Institute of Actuaries (CIA), which has a considerably more transparent
2229 disciplinary process than that of the United States, maintains confidentiality during the
2230 investigation phase and until a decision is made to pursue discipline. The same is true of
2231 the AICPA, AICPCU, Society of Chartered Property-Casualty Underwriters, and the
2232 Certified Financial Planner (CFP) Board of Standards. Indeed, confidentiality was the
2233 rule for every other organization we looked at. Similarly, many private organizations,
2234 including the AICPA and CFP Board of Standards, provide the option of private
2235 reprimand, in which case nothing about the case becomes public. However, once a
2236 decision is made to pursue public discipline, details about the case are generally public.
2237 In the case of the CIA, the hearings themselves are public. Given that most ABCD
2238 complaints are resolved without public discipline, it is unlikely that sufficient
2239 transparency can ever be provided to satisfy observers regarding the effectiveness of the
2240 profession’s disciplinary processes. Nonetheless, this may be an area where the
2241 profession should consider obtaining outside assistance to benchmark its process against
2242 other disciplinary organizations, particularly as they relate to transparency.

2243
2244 **3. Availability of private reprimand, uniform disciplinary decisions, and consistent**
2245 **public statements.** The CRUSAP Task Force believes that all organizations should have a
2246 private reprimand option available. In the absence of a private reprimand option, the
2247 ABCD resolves more cases using counseling than it would otherwise. Other self-
2248 disciplinary systems reviewed by the CRUSAP Task Force had a private reprimand
2249 option.

2250
2251 Furthermore, the CRUSAP Task Force believes it is desirable for each of the actuarial
2252 organizations of which the actuary is a member to impose the same punishment in a
2253 particular case of misconduct. Developing a common menu of disciplinary options for the
2254 five membership organizations is unlikely to resolve the problem of non-uniform

2255 discipline decisions so long as the decision is made individually by the separate
2256 organizations. The CRUSAP Task Force believes the profession should consider the
2257 creation of a new joint body (perhaps a joint standing committee) to impose discipline in
2258 lieu of the separate disciplinary processes within the membership organizations.
2259

2260 While the details of this process need to be developed, the CRUSAP Task Force
2261 discussed a structure in which the ABCD would do the initial investigation and decide
2262 whether to refer the case for discipline, without recommending a specific action. The
2263 ABCD would retain its role in counseling and would effectively become a body for
2264 investigation, counseling, and guidance. If, after an investigation and hearing, the ABCD
2265 decided to recommend discipline, it would provide the new disciplinary board or joint
2266 standing committee with copies of all relevant documents, including a copy of the
2267 ABCD's investigation report and a transcript of the hearing. The disciplinary board or
2268 joint standing committee would make a decision on what discipline to impose, if any,
2269 based on its established procedures. In this way, the process of investigation and
2270 discipline would be kept separate, a fundamental protection in most government
2271 disciplinary actions. Ideally, all of the membership organizations would defer to this
2272 body's decision. Similarly, the new board could be made responsible for public
2273 dissemination of appropriate information, eliminating the concern that the separate
2274 membership organizations would release inconsistent information in a disciplinary action.
2275 An appropriate appeals process would need to be created.
2276

2277 During its study, the CRUSAP Task Force reviewed the disciplinary processes of some
2278 other professional organizations. However, the Task Force did not conduct a detailed
2279 comparison between the disciplinary processes of the actuarial profession and those of
2280 other professions. There are experts knowledgeable in this area who could assist the
2281 actuarial profession in benchmarking its processes against others'. A knowledgeable
2282 expert could be retained to review the process, to consider where transparency might be
2283 improved (or confidentiality protections relaxed), and to assist with the establishment of
2284 the new disciplinary board or joint standing committee.
2285

2286 **4. Involvement of non-actuaries in discipline decisions.** The CRUSAP Task Force
2287 considered whether including non-actuaries in the disciplinary process might improve its
2288 credibility. Given the limited amount of public discipline, critics could argue that the
2289 current system is more illusion than real self-discipline, designed primarily to protect the
2290 profession. While the Task Force does not support that perspective, the current structure,
2291 coupled with confidentiality protections and the emphasis on counseling, makes it
2292 difficult to argue the profession's case persuasively. Some respondents believe the
2293 credibility of the U.S. process would be improved by including non-actuaries, and it
2294 would provide a healthy outside perspective on disciplinary actions. Others, however, are
2295 concerned about political interference from non-actuaries and the difficulty non-actuaries
2296 might have in understanding actuarial work. They have argued that nothing we can do
2297 will assuage the critics in the event of major actuarial malfeasance, i.e., self-discipline is
2298 ultimately doomed.
2299

2300 The CRUSAP Task Force believes the stronger arguments support the inclusion of non-

2301 actuaries in the disciplinary process. Concerns about political interference and the ability
2302 to effectively contribute to the discussion can be addressed by selecting appropriate non-
2303 actuaries. One option for increasing the involvement of non-actuaries and enhancing the
2304 independence of the disciplinary process is to create a new Actuarial Oversight Board
2305 (AOB) with a significant membership of non-actuaries. The AOB would oversee the
2306 activities of the ABCD and the new joint disciplinary board. Ideally, the new joint
2307 disciplinary board would also include a number of non-actuaries.

2308

2309 **Relationship Between ABCD, the ASB, and the Membership Organizations**

2310 The analysis uncovered two areas where the relationship between the ABCD and other
2311 structures in the profession should be changed or formalized.

2312

2313 ***1. Feedback to the actuarial standard-setting bodies and membership organizations.***

2314 During its deliberations, the ABCD periodically identifies elements of the Code,
2315 Qualification Standards, or ASOPs that need to be clarified or amended. Currently, that
2316 feedback occurs on a very informal basis. The process for the ABCD to recommend
2317 changes to the Code, Qualification Standards, and ASOPs should be formalized, and its
2318 recommendations should periodically be made in writing.

2319

2320 In general, the ABCD is in a position to see problem issues that are developing within the
2321 profession. The ABCD should alert the membership organizations and standard-setting
2322 bodies when it sees a pattern of practice that is a concern to the Board. This would serve
2323 two purposes. First, it would help to clarify how the ABCD views emerging issues, and,
2324 second, it would focus the membership organizations and standard-setting bodies on
2325 issues that need to be addressed.

2326

2327 ***2. Relationship to the American Academy of Actuaries.*** Currently, the ABCD budget is
2328 part of the Academy's budget. This structure has led to at least one instance where the
2329 ABCD was negatively affected by trends in the Academy's financial condition. As the
2330 ABCD is, in reality, a joint body, its budget should be approved collectively by the five
2331 membership organizations.

2332

2333 Related to this is the need for increased transparency in the funding of the ABCD (and
2334 ASB). According to a May 2006 discussion paper prepared by the Independence Task
2335 Force of the Academy Council on Professionalism, the funding mechanism for the
2336 ABCD and ASB is not widely or well understood. Current perceptions are that the
2337 Academy funds the bulk of the ASB and ABCD budgets, creating the potential for the
2338 Academy to exert too much financial control over the boards' operations. The
2339 Independence Task Force has expressed its opinion that the amount paid by each member
2340 for the ABCD and ASB should be itemized separately on the organizations' dues notices
2341 to clarify their financial independence. The CRUSAP Task Force concurs.

2342

2343 **Conclusions**

2344 The CRUSAP Task Force believes that the profession should consider taking the
2345 following actions:

- 2346
2347 A. Learning about possible violations of the Code and Standards
2348
2349 1. Continue outreach to actuaries and regulators, with increased emphasis on
2350 regulators.
2351
2352 2. Establish a procedure for follow-up where discipline or counseling has been
2353 imposed.
2354
2355 3. Consider developing a system of automatic triggers, such as an insurer
2356 solvency, for review of an actuary's work, including the resource issues and
2357 where the initial review should occur.
2358
2359 4. Explore the feasibility of the following legislative or regulatory changes:
2360
2361 a. Ability for the Joint Board for the Enrollment of Actuaries and state
2362 insurance regulators to share confidential information with the ABCD;
2363 b. Ability for the ABCD to share confidential information with state and
2364 federal regulators;
2365 c. Stronger whistle-blower protections for actuaries and non-actuaries
2366 who report violations of actuarial standards, laws, or regulations by
2367 actuaries or non-actuaries.
2368
2369
2370 B. Establishing credibility of the process
2371
2372 1. Consider the relationship between the profession and a federal insurance
2373 regulator, if Congress enacts federal charter legislation. In particular, consider
2374 whether it would be desirable to pursue federal recognition of the profession,
2375 perhaps through federal licensure.
2376
2377 2. Retain an expert on professional disciplinary processes to benchmark the
2378 profession's system against others', with particular emphasis on transparency.
2379
2380 3. Create a new disciplinary body (e.g., board or joint standing committee) that
2381 would make disciplinary decisions on behalf of all membership organizations
2382 and be responsible for public statements on disciplinary actions. Structure the
2383 process so a private reprimand is available to members of all organizations.
2384 Develop an appropriate appeals process for decisions made by the new
2385 disciplinary body.
2386
2387 4. Add non-actuaries to the disciplinary decision process. Consider creating an
2388 Actuarial Oversight Board (AOB) to oversee the operation of the ABCD and
2389 the new joint disciplinary body. Include non-actuaries on the AOB and the
2390 new joint disciplinary body.
2391

- 2392 C. Clarifying the relationship between the profession's self-regulatory bodies and
2393 the membership organizations
2394
2395 1. Formalize feedback from the ABCD to the ASB concerning recommended
2396 changes to the Code, Qualification Standards, and ASOPs.
2397
2398 2. Provide for joint approval of the ABCD, ASB, Actuarial Oversight Board, and
2399 the new disciplinary board budgets by the presidents and presidents-elect of
2400 the five membership organizations. Increase transparency in the per capita
2401 fees supporting these boards by itemizing charges separately in the dues
2402 notices of the participating organizations.
2403