

## **IV. Oversight and Regulation**

### **Introduction**

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

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

- 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.

### **Direct Government Oversight**

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

The Joint Board qualifies individuals to perform services under ERISA. It also conducts disciplinary proceedings. In general, three types of misconduct 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.

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, it would have provided broader federal recognition of the actuarial profession, not unlike

what Canadian actuaries currently have. It is possible that creation of an optional federal charter for insurance companies would create another opportunity for broader federal recognition of the profession, via either direct supervision or a system of indirect federal supervision (similar to what has evolved at the state level).

### **State Regulatory Oversight**

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

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

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

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

Regulators view the profession's system for self-regulation, including oversight and discipline of its members, as becoming increasingly important in light of the movement to a more principles-based valuation system in the life insurance industry. Given the increased use of judgment in reserving and capital requirements under a principles-based approach, the competence of the valuation actuary will grow in importance. Several regulators have suggested that the profession's current self-regulatory processes do not give them sufficient confidence that poor-quality actuarial work will be identified and

addressed. The NAIC and the American Academy of Actuaries are considering a system of mandatory external review of specific actuarial work (e.g., reserving) as a possible solution.

### **Self-Regulation by the Profession**

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

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

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

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

**Table 4.1  
 ABCD Cases Completed  
 Inception Through 2005**

<b>Outcome</b>	<b># cases</b>		<b>Excluding Requests for Guidance</b>
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%	

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

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

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

An extensive review of the ABCD was undertaken in 2002. An ABCD Review Task Force was appointed by the Council of Presidents, a body composed of the presidents and presidents-elect of all the North American actuarial organizations. The ABCD Review Task Force, chaired by Daniel J. McCarthy, reported its recommendations in July 2002. The Task Force's overall conclusion was that the operation of the ABCD was

fundamentally sound. It did identify some areas for improvement. Recommendations were made to improve timeliness, communications with affected parties, and the investigation process. The ABCD Review Task Force was particularly impressed with the ABCD's responses to requests for guidance and urged the ABCD to more widely publicize the availability of this service. The Task Force encouraged the ABCD to continue to educate the profession, using actual complaints and requests for guidance, appropriately redacted to preserve confidentiality. Finally, the Task Force commented that it was the "predominant view of the ABCD members" that it would be helpful if all organizations had the private reprimand option available. Most of the ABCD Review Task Force's recommendations have been implemented. However, although the ABCD supported making the private reprimand option available in all organizations, this has not been done.

## **Analysis**

Our review of the profession's systems for oversight and regulation identified several issues.

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

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

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

Precept 13 of the Code of Professional Conduct requires an actuary to report another actuary's apparent, unresolved material violation of the Code to the ABCD, except where the disclosure would be contrary to law or would divulge confidential information. An apparent violation is unresolved if the actuary observing the violation decides not to attempt to resolve it with the actuary or any attempt at resolving it is unsuccessful in the view of the observing actuary. Here again, there are limits to what is reported. Confidentiality protections in litigation may prevent an actuary from reporting a

suspected Code violation. Furthermore, some actuaries report a reluctance to make complaints for a variety of reasons, including a lack of clarity on when a complaint is appropriate. Awareness about the ABCD also appears to be a problem, in spite of the ABCD's efforts at education and outreach. Based on the results of Academy professionalism surveys conducted in 2000 and 2005, it appears that the general level of awareness of the ABCD declined slightly between 2000 and 2005, as indicated in Table 4.2.

---

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

	<b>2005</b>	<b>2000</b>
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 reserves (recommended by the Casualty Actuarial Society's Task Force on Credibility of the Actuary in May 2005). One CRUSAP survey respondent suggested the profession create a committee of actuaries to assist the NAIC or states in determining if there was evidence of actuarial misconduct in an insolvency. However, current state confidentiality protections would limit the ability to do that effectively. The Academy's Council on Professionalism made such a proposal to the NAIC in 1994, but no action was taken.

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

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

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

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

### **Credibility of the Process**

The analysis identified some issues regarding the credibility of the profession's disciplinary processes once a case is opened. Some actuaries responding to the CRUSAP survey supported an aggressive approach to misconduct and questioned the ABCD's balance between counseling and recommendations for discipline, while others questioned the policy of delaying investigation during litigation. Some observers have questioned the consistency of ABCD decisions, with one observer arguing the ABCD used different interpretations of "conflict of interest" in different situations. Given the significant confidentiality protections that surround the activities of the ABCD, the ABCD is unable to respond adequately to these questions. Furthermore, the inability to release details about cases hampers the ABCD's efforts to educate other actuaries by using examples of actual misconduct.

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

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

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

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

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

**2. Transparency.** The lack of transparency in the ABCD’s operations, while problematic from the perspective of credibility, is also typical of an organization such as this. The Canadian Institute of Actuaries (CIA), which has a considerably more transparent disciplinary process than that of the United States, maintains confidentiality during the investigation phase and until a decision is made to pursue discipline. The same is true of the AICPA, AICPCU, Society of Chartered Property-Casualty Underwriters, and the Certified Financial Planner (CFP) Board of Standards. Indeed, confidentiality was the rule for every other organization we looked at. Similarly, many private organizations, including the AICPA and CFP Board of Standards, provide the option of private reprimand, in which case nothing about the case becomes public. However, once a decision is made to pursue public discipline, details about the case are generally public. In the case of the CIA, the hearings themselves are public. Given that most ABCD complaints are resolved without public discipline, it is unlikely that sufficient transparency can ever be provided to satisfy observers regarding the effectiveness of the profession’s disciplinary processes. Nonetheless, some improvement in transparency is desirable.

During its study, the CRUSAP Task Force reviewed the disciplinary processes of some other professional organizations. However, the Task Force did not conduct a detailed

comparison between the disciplinary processes of the actuarial profession and those of other professions. There are experts knowledgeable in this area and able to assist the actuarial profession in benchmarking its processes against others. The profession should consider retaining an expert, knowledgeable in professional disciplinary procedures, to review its discipline processes, benchmark them against those of other professions, suggest how transparency might be improved (or confidentiality protections relaxed), and assist with the establishment of the new disciplinary body or joint standing committee.

**3. Availability of private reprimand, uniform disciplinary decisions, and consistent public statements.** The CRUSAP Task Force believes that all organizations should have a private reprimand option available. Furthermore, the profession should consider empowering the ABCD to impose a private reprimand, itself. Under such a system, if an actuary is willing to accept the ABCD's imposition of a private reprimand, the inquiry would be concluded, the reprimand issued, and the member's organization notified of the action. If the subject actuary is not willing to accept the ABCD-imposed reprimand, the inquiry would still be referred to the appropriate organization(s) for disciplinary action. In the absence of a private reprimand option, the ABCD resolves more cases using counseling than it would otherwise. Other self-disciplinary systems reviewed by the CRUSAP Task Force had a private reprimand option.

The CRUSAP Task Force believes it is desirable for each of the actuarial organizations of which the actuary is a member to impose the same punishment in a particular case of misconduct. Developing a common menu of disciplinary options for the five membership organizations is unlikely to resolve the problem of non-uniform discipline decisions so long as the decision is made individually by the separate organizations. The CRUSAP Task Force believes the profession should consider the creation of a new joint body (perhaps a joint standing committee) to impose discipline on behalf of the profession, in lieu of the separate disciplinary processes currently within the membership organizations. As an alternative to a standing committee, an ad hoc committee could be created for each case.

While the details of this process need to be developed, the CRUSAP Task Force discussed a structure in which the ABCD would retain its current roles of investigation, counseling, guidance, and recommendation for discipline, as well as adding that of offering private reprimands. If, after an investigation and hearing, the ABCD decided to recommend a particular form of discipline, it would now make that recommendation to the new joint disciplinary body, providing it with copies of all relevant documents, including a copy of the ABCD's investigation report and a transcript of the hearing. The joint disciplinary body would make a decision on what discipline to impose, if any, subject to appeal to the membership organization(s) for any discipline resulting in suspension or expulsion. Similarly, the new body could be made responsible for public dissemination of appropriate information, eliminating the concern that the separate membership organizations would release inconsistent information in a disciplinary action.

**4. Involvement of non-actuaries in discipline decisions.** The CRUSAP Task Force considered whether including non-actuaries in the disciplinary process might improve its

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

The CRUSAP Task Force believes the stronger arguments support the inclusion of non-actuaries in the disciplinary process, and notes that some countries have recently moved toward including non-actuaries in disciplinary decisions (e.g., the United Kingdom and Canada). The Task Force believes concerns about political interference and the ability to effectively contribute to the discussion can be addressed by selecting appropriate non-actuaries. The Task Force also believes that including representation from other professions can serve as a "reality check" on the disciplinary philosophy of the profession.

In view of the many comments we received on this recommendation in the draft CRUSAP report, however, we are also convinced this issue merits further study. Several comments questioned the need for the U.S. actuarial profession to develop a disciplinary process that mirrors governmental oversight. Resolving this disagreement requires a clear understanding of the objectives of the profession's disciplinary processes. Thus we recommend the profession first agree on the purpose of its disciplinary processes and whether credibility of the process to those outside the profession is important. We believe it is. Second, the profession should benchmark the disciplinary processes of U.S. actuaries against those of (1) other U.S. professionals and (2) actuaries in other countries. Given the results of that benchmarking and the objective of the disciplinary process, strong consideration should be given to including non-actuaries.

**5. Oversight of the ASB, ABCD, and joint disciplinary body.** Finally, the Task Force discussed the creation of an actuarial oversight body, which would oversee the operations of the standard-setting and disciplinary bodies. One of the Task Force's primary motivations in suggesting the creation of such a body was to provide a mechanism to include non-actuaries in the oversight of the profession's standard-setting and disciplinary processes. The Task Force believes this body should include two non-actuarial professionals, selected for their stature and expertise and their understanding of the actuarial profession, who might be selected through organizational links established with other professional organizations. The responsibility of the actuarial oversight body would be to advise and oversee the professional regulation boards involved in standard setting and discipline, including the ASB, ABCD, and a joint disciplinary body. This would include appointing members, reviewing and submitting budgets, reviewing their activities, and making recommendations on issues needing resolution.

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

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

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

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

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

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

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

## **Conclusions**

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

- A. Learning about possible violations of the Code and Standards
  1. Continue outreach to actuaries and regulators, with increased emphasis on regulators.

2. Establish a procedure for follow-up where discipline or counseling has been imposed.
  3. Consider developing a system of automatic triggers, such as an insurer solvency, for review of an actuary's work, including the resource issues and where the initial review should occur.
  4. Explore the feasibility of the following legislative or regulatory changes:
    - a. Ability for the Joint Board for the Enrollment of Actuaries and state insurance regulators to share confidential information with the ABCD;
    - b. Ability for the ABCD to share confidential information with state and federal regulators;
    - c. Stronger whistle-blower protections for actuaries and non-actuaries who report violations of actuarial standards, laws, or regulations by actuaries or non-actuaries.
- B. Establishing credibility of the process
1. Create a new disciplinary body (e.g., board, standing committee, ad hoc committee) that would make disciplinary decisions on behalf of the profession and be responsible for public statements on disciplinary actions. Structure the process so a private reprimand is available to members of all organizations and consider empowering the ABCD to impose private reprimands. Develop an appropriate appeals process for decisions made by the new disciplinary body, permitting appeals to the membership organizations for any discipline resulting in suspension or expulsion.
  2. Benchmark the profession's system against others', with particular emphasis on transparency and the involvement of those outside the profession in the disciplinary and standard-setting processes. Given the results, identify ways to increase transparency in disciplinary processes and consider the merits of including non-actuaries on the ABCD and/or joint disciplinary body.
  3. Consider creating an actuarial oversight body to oversee the operation of the ABCD and the new joint disciplinary body. Include at least two non-actuarial professionals in its membership, selected for their particular expertise and understanding of the actuarial profession, possibly selected through organizational links with other professional organizations. Charge the actuarial oversight body with advising and overseeing the professional regulation boards involved in standard-setting and discipline, including the ASB, ABCD, and joint disciplinary body. Its responsibilities would include appointing members, reviewing and submitting budgets, reviewing their activities, and making recommendations on issues needing resolution.

- C. Clarifying the relationship between the profession's self-regulatory bodies and the membership organizations
1. Formalize feedback from the ABCD to the ASB and other actuarial professional organizations concerning issues identified and recommended changes to the Code, qualification standards, and ASOPs.
  2. Provide for joint approval of the budget of the actuarial oversight board, including the budgets of the ABCD, ASB, and the joint disciplinary body by the presidents and presidents-elect of the five membership organizations. Increase transparency in the per capita fees supporting these boards by itemizing charges separately in the dues notices of the participating organizations.