

Q&A – Joint Discipline Proposal
May 5, 2011 (Updated July 11, 2011)

Introduction

In 1992 five organizations, the American Academy of Actuaries, American Society of Pension Actuaries, Casualty Actuarial Society, Conference of Consulting Actuaries and Society of Actuaries, joined together to create a unified discipline process. A robust disciplinary process strengthens adherence to recognized standards of ethical and professional conduct among members of the actuarial profession. It does this by providing guidance to actuaries and considering complaints regarding possible violations of the Code of Professional Conduct. Over the past few years, the leaders of the five actuarial organizations mentioned above reviewed the existing discipline structure. While the current system is fundamentally sound, four issues were identified that, if addressed, could enhance the disciplinary process; a proposal was then developed to address these issues.

Question 1: What issues with the current disciplinary system were identified?

A. There can be too many hearings. Under the current system, there are typically two, and potentially three, hearings if the actuary is a member of only one organization: a fact-finding hearing generally at the Actuarial Board for Counseling and Discipline (ABCD), a disciplinary panel hearing at the member's organization and an appeal before another panel at the member's organization should the actuary disagree with the outcome. For each additional participating organization in which the actuary holds membership, there are as many as two additional hearings. For actuaries who are members of three organizations, there could be as many as seven hearings.

B. There can be inconsistent outcomes. Due to multiple hearings by different discipline committees of different participating organizations, there have been situations where an individual who is a member of multiple organizations received different levels of discipline for the same offense. There also, currently, are no formal case histories developed that could guide consistent outcomes over time.

C. There may be a need for more transparency. Due to the current requirements for confidentiality, there can be an impression that the process is geared toward protecting actuaries rather than protecting the public. This balance between confidentiality and transparency is currently under consideration by a task force.

D. Failure to address these issues could place the profession's independence in jeopardy. Due to increased attention by the Federal government over financial services, and reflecting the history of increased regulation of auditors in the U.S. and actuaries in the U.K., the lack of consistent outcomes and lack of transparency makes the profession vulnerable to criticism from the public.

Question 2: What is the basis of the proposed solution?

A. The current system has worked well for many years, and the proposal retains many of its key features. The ultimate goals are to streamline the process, achieve more consistent outcomes, take the first steps to improve transparency and help reduce the risk to the profession's independence.

In the United States, the ABCD will still perform thorough investigations and make appropriate recommendations. The subject actuary will continue to be judged by a panel of his or her peers. Each organization will retain ultimate control over its membership.

Question 3: How will disciplinary panels be selected and hearings operate?

A. Under this proposal, disciplinary recommendations, in most cases made by the ABCD (see Question 8), will be submitted for determination to a single representative joint disciplinary panel that is appointed by the leaders of the organizations, rather than being considered separately by each member organization. The disciplinary panel will have majority members in each of the subject actuary's organizations¹. The disciplinary panel may decide to accept, reduce, dismiss or increase the recommended penalty. Any decision by the panel to impose discipline would be by a supermajority of the disciplinary panel members (see Question 7).

Question 4: How will the appeals process work?

A. All appeals would be considered by a joint appeal panel – again, appointed by the leaders of the participating organizations – that has different members than the disciplinary panel. Grounds for an appeal would be limited to procedural errors or new evidence that was not reasonably available at the time of the disciplinary hearing. The appeal panel would either affirm the decision or remand the case to either a new or the same disciplinary panel. Decisions of the appeal panel are by a simple-majority vote.

¹ There may be rare instances where this is not possible (e.g., where the subject actuary is a member of four or more organizations).

Question 5: Would all decisions coming out of the process be final?

A. If the decision is for no discipline (with or without counseling), a private or public reprimand or a suspension of up to two years, the decision will be final. Recommendations for expulsions and suspensions of more than two years will still be the ultimate decision of each organization; however, an organization cannot reduce the discipline in such cases to less than a two-year suspension. This process would generally reduce the number of formal hearings to two or three, regardless of how many member organizations are involved. It should also result in more consistent decisions over time.

Question 6: Would the ABCD have any new responsibilities under the new process?

A. Under this proposal, the ABCD also would be charged with developing case summaries to aid future panels and help increase consistency. While identifying details would be removed to protect the subject actuary's confidentiality, these cases would help establish precedent and could be used to educate members.

Question 7: What if a supermajority of the disciplinary panel cannot reach a decision on the penalty?

A. If at least two members of the disciplinary panel believe that the Code of Conduct has not been materially violated, no discipline would be imposed. Otherwise (i.e., all or all but one of the panelists believe that there was a material violation of the Code), the panel will deliberate until a consensus on the penalty is reached. This penalty would be the highest level upon which all or all but one can agree. The disciplinary panel can also, by simple majority vote, refer the matter to the ABCD or other appropriate investigatory body for counseling, whether or not discipline has been imposed, remembering that counseling is not considered discipline.

Question 8: Does this proposal pertain to me if I work outside of the United States? (*Response updated July 11, 2011*)

A. The jurisdiction extends to the actuarial practice of the five participating organizations' members in every country. However, under a cross-border agreement between the U.S. based organizations and the Canadian Institute of Actuaries (CIA), the CIA rather than the ABCD conducts fact-finding hearings on issues related to the practice of an actuary who is a member of a U.S. based organization in Canada, but discipline is determined through the member organizations. Therefore, a member of the SOA, for instance, who is practicing in Canada would be subject to the proposed joint discipline process once a report is received by the leaders of the organizations from the CIA. Similarly, CIA members' actuarial practice in the United States would continue to be investigated by the ABCD and then forwarded on to the CIA. *Whether the investigation is by the CIA or ABCD, the organizations of which the actuary is a member then decide upon and impose discipline in accordance with their rules and bylaws.* Other cross-border agreements may be negotiated in the future.

Question 9: Does the proposal result in any changes to the appropriate investigative bodies' processes? (*Question reworded July 11, 2011*)

A. These proposals would not change the manner in which the investigative bodies operate. They will continue to investigate cases and make disciplinary recommendations when appropriate.

Question 10: Are other revisions to the disciplinary process being considered?

A. No other revisions are being considered as part of this proposal. As with any process or procedure, the actuarial disciplinary process is, and should be, evolutionary in nature. The changes being proposed arose because leaders of the organizations recognized that the current system needed improvement. The participating organizations will continue to regularly examine and recommend improvements to this process. In particular, transparency issues associated with the process are currently being considered by a task force.

Question 11: What is the governing body of the joint discipline process?

A. The governing body is the Joint Discipline Council, which is comprised of the presidents and presidents-elect of the participating organizations. Work is ongoing on the formal structure.

Question 12: What's the process to get this proposal considered and enacted?

A. The boards of the participating organizations have approved in principle to move forward to propose these improvements to the discipline process for member consideration and directed a joint implementation task force to finalize the details of the proposal. Any changes to the disciplinary system would require amendments to the various organizations' bylaws or constitutions, which require approval by the organizations' boards of directors and, ultimately, members. (The specific process for approval of bylaws or constitution amendments varies among the organizations.) Input from members is encouraged but keep in mind that the proposal must meet the needs of each of the five participating organizations.

Question 13: Has consideration been given to including non-actuaries (i.e., at least one person who is not a member of any actuarial organization) on the Joint Discipline Council? (Added July 11, 2011)

A. A task force under CUSP has discussed this and is not recommending (to CUSP or the organizations represented by CUSP) to add non-actuaries to the Joint Discipline Council at this point. As a result, under the draft of the Joint Agreement being presented, the Joint Discipline Council is made up of only the Presidents and Presidents-Elect of the organizations that are parties to the agreement.

Question 14: Could you describe how members of the actuarial organizations are appointed to the joint disciplinary pool? (Added July 11, 2011)

A. There will be a pool of potential panelists that will be populated by each of the participating organizations. Pool members will be expected to be available for appointment to panels for a period of time. Each of the participating organizations will need to determine how its members are appointed to the pool and their term of service.

Question 15: In the sample case study in the document labeled “The Actuarial Discipline Process: Before and After,” the ABCD will send its report to each of the three organizations, then each of the three organizations sends the same report to the Joint Discipline Council. Could the ABCD send its report to the three organizations and the Joint Discipline Council simultaneously? (Added July 11, 2011)

A. If the ABCD decides to recommend discipline, the ABCD prepares a report recommending discipline and sends an identical report and transcript of the hearing to the three organizations of which the Subject Actuary is a member. This step allows the organizations to be informed as to the recommendations of the ABCD and is required by the Academy bylaws establishing the ABCD. It is appropriate to continue this step since it is possible that one or more of the organizations will not be a party to the proposed new joint process at the outset or will decide later to withdraw from the joint process. Each organization can, however, instruct the ABCD to send a copy of the report directly to the Joint Discipline Council.

Question 16: What is the composition of the disciplinary panel if an actuary is a member of only one of the organizations that is part of the Joint Agreement? (Added July 11, 2011)

A. The Joint Agreement would still hold. In such a case all of the members of the Joint Disciplinary Panel would have to also be members of that same organization. For example, if the subject actuary was an SOA member only, then all of the members of the disciplinary panel would also have to be SOA members.