

AMERICAN ACADEMY OF ACTUARIES

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Council on Professionalism

THE ACTUARY'S RELATIONSHIPS WITH  
USERS OF A WORK PRODUCT

Concepts on Professionalism

Discussion Paper

*Prepared by*

Committee on Professional Responsibility

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# PREFACE

This discussion paper was developed by the Committee on Professional Responsibility of the American Academy of Actuaries for discretionary use by actuaries. Its purpose is to assist actuaries in considering their relationships with the various users of their work products. This paper was not promulgated by the Actuarial Standards Board and is not binding upon any actuary. No affirmative obligation is intended to be imposed on any actuary by this paper, nor should such an obligation be inferred from any of the ideas expressed or suggestions made herein. This discussion paper is intended to stand on its own and be freely interpreted.

In considering and addressing the interests of the various parties who use their work products, actuaries should be guided by the Code of Professional Conduct. To the extent any conflict exists or could be implied between this paper and the Code of Professional Conduct, the Code prevails. Members, reflecting upon the Code and other professional standards that apply to them, are free to accept or reject any part of or the whole of this discussion paper as they choose.

Members are encouraged to share their comments on this paper with the Committee on Professional Responsibility to facilitate improvement in any future releases on this topic. Comments can be submitted to [paper@actuary.org](mailto:paper@actuary.org).

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*The Committee on Professional Responsibility presents these ideas with the expectation that they will be both useful and thought-provoking and will enhance the actuarial profession's consideration of its individual and collective relationships with users of actuarial work products. Ultimately, it is the Code of Professional Conduct that governs the responsibilities of actuaries in this area. However, the ideas and suggestions offered in this paper are intended to assist actuaries in applying the Code of Professional Conduct to their individual situations. The committee believes that expanded discussion of the concepts and suggestions offered in this paper will benefit the profession.*

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# BACKGROUND

The actuarial profession continues to achieve increasing public visibility. Media and legislative attention has focused on the role of pension actuaries in advising pension plan sponsors concerning their decisions to convert their employee benefit plans from traditional defined benefit plans to cash balance plans. The media have also scrutinized the assumptions and methods used by the actuaries for the Social Security system. In addition, insurance regulators have suggested that some actuaries, in their efforts to assist companies to mitigate the costs of compliance with regulation, may have met the letter of regulatory requirements without satisfying their underlying intent. It was implied that actuaries have not only a direct relationship with their clients and employers but also an indirect relationship with regulators, employee benefit plan participants, insurance policyholders, and the general public and that, in some instances, actuaries were not necessarily giving appropriate attention to these relationships.

Concerned that the reputation of the actuarial profession might be unfairly harmed by these implications, the leaders of the profession discussed at length whether actuaries would benefit from a statement of principles regarding their relationships with the various users of their work products. It was recognized that the Code of Professional Conduct (Code) offers explicit guidance in this area, particularly with respect to actuaries' principals (*i.e.*, clients and employers). However, it was felt that actuaries might welcome assistance in identifying factors to consider when applying the Code in particular situations, especially when attempting to reconcile their

responsibilities to their principals with the interests of other users of their work products.

The Actuarial Standards Board (ASB) was asked to consider issuing an Actuarial Standard of Practice (ASOP) concerning actuaries' relationships with the users of their work products. After careful consideration, the ASB concluded that more discussion was needed within the profession before such a standard could be issued. The ASB agreed that members of the profession might well find guidance in this area to be beneficial. However, the ASB believed that individual actuaries might disagree concerning how to apply the Code to particular situations involving the use of their work products and that it would be preferable for the profession to reach a reasonably clear consensus before binding guidance in the form of an ASOP was developed.

There continued to be agreement within the leadership of the profession, however, that actuaries would find a discussion of their relationships with the users of their work products to be helpful. Accordingly, the American Academy of Actuaries' (Academy's) Council on Professionalism asked the Committee on Professional Responsibility (committee) to prepare a discussion paper for broad dissemination to the membership. The purpose of the paper would not be to impose mandatory requirements on actuaries but to identify issues, enhance sensitivities, and assist actuaries in applying the Code when questions arise in their day-to-day practices.

This paper, therefore, is intended to be broadly shared among the membership of the Academy and its sister organizations. In

preparing this discussion paper, the committee recognized that there is likely a wide range of experience and opinion within the profession concerning actuaries' relationships with the various users of their work products. However, the committee believes that actuaries working for employers and clients of all types and sizes can benefit from reading and considering the concepts and suggestions contained in this paper. The committee is not advocating any mandatory practices beyond those required by the Code,

the ASOPs and the Qualification Standards for Prescribed Statements of Actuarial Opinion (Qualification Standards).

By sharing the thoughts of several experienced actuaries, the committee encourages each actuary to give appropriate consideration to the varying interests of the users of the actuary's work product whenever the actuary provides professional services. Ultimately, however, each actuary must decide how to appropriately fulfill professional responsibilities in this area.

# The Code of Professional Conduct

The Code was adopted by the Academy and its sister organizations in the United States to provide guidance on how to perform professional services in an ethical and competent manner. The Code governs actuaries' conduct with respect to their principals, other users of their work products, the general public, and the profession itself.

In some instances, laws, regulations, and contracts or other agreements between an actuary and another party may impose duties upon the actuary beyond those established by the Code. This paper does not specifically address such duties. Actuaries are encouraged to contact their own legal counsel or other advisors concerning their duties beyond those imposed by the Code.

One question that sometimes arises is if, when doing work that is not traditionally actuarial in nature, an actuary is performing "professional services" and, therefore, is bound by the Code. Some examples of this include software development, insurance product design or marketing, tax and investment counseling, pension plan design, and company management. Some actuaries believe that such work is beyond the scope of the Code and that actuaries should not be subject to discipline if their conduct when

engaging in such work violates the Code. Other actuaries believe that the Code should apply to such work, but only if the principal (*i.e.*, client or employer) using the work specifically relied upon the actuary's professional credentials when hiring the actuary to do the work. Still other actuaries believe that the Code applies to all of the work that they do, whether that work is actuarial in nature or not.

The committee believes that, in most instances, the Code applies to an actuary's work, whether actuarial in nature or not, to the extent that the Code has relevance to that work. If, for example, an actuary was providing professional services for which no ASOP had been adopted, the requirement to follow the ASOPs would not apply. However, Precept 1's requirement to act honestly and with integrity and competence would apply to any professional services provided by an actuary, regardless of whether those services were actuarial in nature.

Another issue that occasionally arises is whether the Code applies to professional services that the actuary provides on a *pro bono* basis. The committee believes that the Code applies to all professional services, regardless of whether the actuary is compensated for those services or not.

# Relationships With Principals

An actuary who undertakes to provide professional services (*e.g.*, services such as the rendering of advice, recommendations, findings, or opinions based on actuarial considerations) to a principal (defined in the Code as a client or employer) accepts certain responsibilities as a consequence of the relationship with that principal. Much of the Code is devoted to discussing the professionalism aspects of those responsibilities.

The actuary's first task typically is to identify the principal(s) the actuary is being called upon to serve in a given situation. When an actuary is the employee of a single company or works alone as a consultant for a single client, it is usually clear who the actuary's principal is. However, in other situations, it may be less obvious. For example, an actuary may be employed by a consulting firm (which, as the actuary's employer, is a "principal" under the Code) to provide professional services to a client of that firm (another "principal"). An actuary may also be retained by a company (one "principal") *specifically* to provide support to the company's independent auditor. In this situation, it could be argued that the independent auditor, who is expected to place some reliance on the actuary's work, is also a "principal" of the actuary. In these situations, it is usually important for the actuary to recognize that the actuary is providing professional services on behalf of more than one principal and to be sensitive to potential conflicts between the interests and objectives of the two principals.

However, in the absence of such a specific assignment by a company to provide support to others on its behalf, it would

usually be reasonable for the actuary to consider the company the only "principal." In any event, in situations in which the actuary issues an actuarial communication as part of the work, the disclosure in that communication of the principal or principals and the capacity in which the actuary was working (under Precept 5 of the Code) would make the relationships clear.

Further, in some situations, there may be conflicts among individuals or groups who are affiliated with the actuary's principal. Typically, an actuary's principal is a company or firm rather than an individual. However, conflicts may arise between a company or firm's management and shareholders or even between subcategories of shareholders (*e.g.*, common versus preferred shareholders), between departments in a company, between the company and its auditor, between an employee benefits plan sponsor and plan participants or between groups of plan participants (*e.g.*, long-term versus short-term). When the actuary becomes aware of such conflicts, it is usually important for the actuary to refrain from allowing them to affect the actuary's exercise of unbiased professional judgment.

Some actuaries prefer to determine in advance who will serve as their primary contact within the principal organization (for example, the company president or auditor) and to verify that the contact person will provide them with ongoing direction and guidance, answer questions that arise, and provide sufficient data and other information to permit them to successfully complete each assignment. Some actuaries also prefer to determine in advance the extent to which they will have access to other individuals or

groups within the principal organization. For example, the actuary may wish to reserve the right to meet in person with the principal's board of directors. Some actuaries request confirmation of both points in writing before beginning to work on an assignment.

Precept 1 of the Code requires the actuary to act with integrity and competence. This fundamental obligation underlies the entire Code and calls upon the actuary to provide principals with honest, skillful, and careful service. This is not to say that the actuary can never make a mistake or express an opinion that is subsequently proven wrong. Actuarial science is inherently uncertain because it involves the analysis of assumptions and contingent future events. Actual outcomes are likely to differ from expected results based on such analysis. Generally, actuaries would agree that an actuary who follows generally accepted actuarial principles and practices and applies due care and reasoned professional judgment to reach an honest and unbiased opinion satisfies the requirements of Precept 1 regardless of whether subsequent events develop in a different way. It is the integrity, skill, and care that the actuary brings to the work, and not the outcome, that demonstrates compliance with Precept 1.

Precept 2 of the Code requires an actuary to undertake professional assignments only if the actuary is qualified to do so and meets applicable qualification standards. The first half of this requirement calls for the actuary to "look in the mirror" and make a reasonable determination that the actuary has the necessary training and experience to perform an assignment in a professional manner. Although this determination is almost always somewhat subjective, it typically should also be objectively reasonable in the given situation. The second part of the precept also requires

an actuary practicing in the United States to satisfy the Qualification Standards. The Qualification Standards, which are available from the Academy office and are posted on the Academy's Web site, set explicit requirements for basic education, continuing education and experience for actuaries who issue "prescribed statements of actuarial opinion," e.g., opinions issued for purposes of compliance with law or regulation, actuarial standards of practice, or accounting requirements. The Qualification Standards can also be a helpful tool to assist actuaries to determine if they are broadly qualified to perform a particular assignment. Actuaries practicing elsewhere in the world are required by the Code to meet any local qualification requirements. The Code emphasizes, however, that the absence of such requirements does not relieve the actuary of the responsibility to determine that the actuary is qualified to perform a particular service.

Precept 3 of the Code requires an actuary to ensure that work performed by the actuary or under the actuary's direction meets applicable standards of practice. In the United States, these are the ASOPs published by the ASB. The actuary uses professional judgment in selecting and using the ASOPs that apply to a particular assignment, taking into account generally accepted actuarial principles and practices. To assist actuaries, the Academy's Council on Professionalism publishes Applicability Guidelines listing commonly-performed actuarial assignments and the ASOPs that typically apply to them. The Applicability Guidelines are available from the Academy office and are posted on the Academy's Web site. Both the Code and the ASOPs permit the actuary to deviate from the practices recommended in applicable ASOPs, giving the actuary leeway to exercise reasonable professional judgment in adapting the

ASOPs as needed or to apply alternative techniques. However, if the actuary chooses to deviate from applicable ASOPs, the Code and the ASOPs require the actuary to be prepared to justify the use of other procedures and the ASOPs require the actuary to disclose the deviation. This puts the actuary's principal on notice of the actuary's decision to deviate from the ASOPs and creates an opportunity for the principal to request more information about the actuary's reasoning if the principal desires to do so.

In some instances, a principal may ask an actuary to modify findings, conclusions or underlying analysis. This may involve a request by a principal to reorganize or limit the scope of an actuary's report. A request may be made that certain specific points be discussed or not discussed in the report. Actuarial work typically involves a significant element of uncertainty and a principal's business objectives sometimes conflict with an actuary's initial presentation. In such situations, the actuary is usually well advised to evaluate the principal's concerns, carefully reconsider the analysis and conclusions, and determine whether, and to what degree, legitimate business interests of the principal can be included in the actuary's work product. It is reasonable for the actuary to attempt to accommodate the legitimate interests of a principal so long as, in doing so, the actuary can comply with the Code and give due consideration to applicable ASOPs. There is no requirement to do so, but the actuary may find it helpful in some such instances to contact the Actuarial Board for Counseling and Discipline (ABCD) for confidential guidance in such a situation.

Precept 4 of the Code requires the actuary to take appropriate steps to ensure that actuarial communications are clear and appropriate to the circumstances and

intended audience as well as being in compliance with applicable ASOPs. This applies to any form of communication issued by an actuary with respect to professional services, including written, electronic and oral communications. The Code does not hold the actuary responsible for the subjective understanding of the principal or other user of the communication because readers of a communication can and will differ in the care that they exercise and their ability to understand actuarial subjects. Whether the steps taken by an actuary to ensure the clarity of actuarial communications are reasonable will depend on the circumstances and actuaries may disagree concerning how much effort is required in a particular situation to provide a communication that satisfies the requirements of Precept 4. The ASB's ASOP No. 41, *Actuarial Communications*, offers further guidance in this area.

Precept 5 of the Code requires the actuary who issues an actuarial communication, as appropriate, to identify the actuary's principal and the capacity in which the actuary serves. This precept typically has little direct effect on the actuary's relationship to the principal, because the principal typically is aware of the existence and nature of its relationship with the actuary. However, this precept benefits other users of the actuary's work product.

Precept 6 of the Code requires the actuary to make appropriate and timely disclosure to a present or prospective principal of all known or reasonably ascertainable direct and indirect sources of income that the actuary will or may receive with respect to a particular assignment. For example, an investment consulting firm may pay a commission to an actuary if the actuary's client agrees to retain that particular investment consulting firm. This

requirement applies not only to compensation to be received by the actuary but also to compensation to be received by the actuary's firm. The disclosure permits the principal to make a reasonably informed assessment of the actuary's financial and organizational independence with respect to a particular assignment.

Precept 7 of the Code offers guidance to the actuary on how to deal with actual or potential conflicts of interest among present and/or known prospective principals. The precept does not address the interests of parties other than principals; such interests are addressed elsewhere in the Code. It does not require the actuary to consider the interests of former principals to whom the actuary no longer provides professional services (although some actuaries believe it can be prudent for the actuary to do so), nor does it require the actuary to consider the interests of unidentified potential future principals.

The Code is also silent concerning many situations in which a conflict exists between the interests of a current and/or known prospective principal and those of the actuary. In situations where the Code offers explicit guidance (*e.g.*, in Precept 10), the actuary should comply with the Code. In other situations, actuaries disagree concerning the extent to which they must place their principals' interests before their own. Precept 7 offers a process for the actuary to analyze these situations.

Conflicts of interest can arise in a variety of ways. The most obvious is when the financial interests of one principal directly conflict with those of another. For example, if an actuary agreed to value a block of insurance business on behalf of both the seller and the buyer in a purchase and sale transaction, it typically would be in the seller's best interests for the actuary to price the block as high as possible and in the

buyer's best interests for the actuary to price the block as low as possible.

Less obvious conflicts of interest can also arise, however. The solutions to the problems actuaries solve often can involve a *range* of generally acceptable solutions. Actuaries who are not consistent in the positions they might take or who do not carefully explain how the circumstances of a particular assignment make the solution they provide appropriate in the circumstances may find the work they do for one principal to be in conflict with work they either have done or may do for another. For example, if an actuary served as an expert witness in a divorce case and testified on behalf of a client that the direct tracing method was the *only* appropriate method for an actuary *ever* to use *in all circumstances* in calculating the value of pension assets for purposes of a qualified domestic relations order (even though the applicable ASOP specifically permits the use of either the direct tracing method or the fractional rule method), the actuary could be acting in conflict with the interests of any of the actuary's other clients whose positions in litigation would be strengthened by use of the fractional rule method. The conflict could exist even though those clients were not parties to the suit in which the actuary was giving the testimony because the actuary's sworn testimony in the first case would be available for use by opposing counsel in subsequent cases to impeach the actuary's credibility if the actuary subsequently argued in favor of using the fractional rule method. The credibility of the actuary's testimony in the subsequent cases could be reduced, thereby injuring the interests of the actuary's clients in those cases.

When faced with a conflict of interest, the actuary first determines whether the conflict will impair the actuary's ability to act fairly on behalf of all affected principals.

Unless the actuary affirmatively concludes that it will not, the Code requires the actuary to decline the assignment. If the actuary determines that his or her ability to act is unimpaired, the Code requires the actuary to disclose the conflict to the affected principals and to obtain their express consent to the actuary performing the assignment. Most actuaries try to describe the conflict in sufficient detail to permit the principals to make a reasonably informed decision concerning the actuary's participation. Some actuaries obtain the principals' consent in writing or otherwise document the principals' consent before commencing work.

Precept 8 of the Code requires the actuary to take reasonable steps to ensure that the actuary's professional services are not used to mislead other parties. Although this precept primarily benefits users of the work product other than the principal, it indirectly benefits the principal by preventing misuse of, and protecting the integrity of, work performed on the principal's behalf by the actuary. A more extensive discussion of Precept 8 appears in the next section of this paper.

Precept 9 requires the actuary to refrain from disclosing to another party confidential information (*i.e.*, non-public information, including proprietary information or information that is legally restricted from circulation, of which the actuary becomes aware while providing professional services to a principal) unless authorized to do so by the principal or required to do so by law. In addition to the prohibition provided in the Code, an actuary may also be bound by the terms of a separate nondisclosure agreement agreed to in advance either directly or indirectly through the actuary's employer. Some actuaries obtain the principal's consent in writing or otherwise document the principal's consent before disclosing

confidential information.

Precept 10 of the Code requires the actuary to perform services with courtesy and professional respect and to cooperate with others in the principal's interest. The precept recognizes that actuaries can have legitimate differences of opinion and does not seek to stifle discussion of those differences or prevent actuaries from expressing differences of opinion to a principal, although it does instruct actuaries to express differences of opinion in an objective, respectful and courteous manner. The Code also recognizes that principals have an indisputable right to select their professional advisors, and does not prevent an actuary from providing professional services to a principal who has been or is being served by another actuary in a particular assignment.

The Code specifically encourages an actuary to consider consulting with a predecessor actuary before accepting a new assignment. However, it requires the actuary to obtain the principal's consent prior to such consultation. Depending on the circumstances, some actuaries seriously consider declining an assignment if a prospective principal unreasonably refuses to grant such consent. Some actuaries get the principal's consent in writing or otherwise document the principal's consent before contacting the predecessor actuary.

When a principal decides to retain a new or additional actuary, the Code requires the current actuary to cooperate with the new actuary in the principal's interest. However, the requirement is not absolute. The current actuary is permitted to withhold proprietary items such as internal communications or computer programs. The current actuary is required to furnish other relevant information, but may require reasonable compensation for the work required to assemble and transmit pertinent data and

documents. Some actuaries will not provide the information until the compensation is received. The current actuary may also refuse to consult or cooperate with a new actuary based on unresolved compensation issues with the principal *if* the refusal is in accordance with a pre-existing agreement with the principal. Some actuaries include such an agreement as part of an initial retainer letter or other agreement that is entered into with the principal when the professional relationship commences. Where no such agreement exists, the Code requires the actuary to cooperate with the new actuary and to seek to resolve the outstanding compensation issues through other means such as arbitration or litigation.

Precept 11 of the Code prohibits the actuary from engaging in advertising or business solicitation activities that the actuary knows or should know are false or misleading. “Advertising” is defined in the Code as “all communications by whatever medium, including oral communications, that may directly or indirectly influence any person or organization in deciding whether there is a need for [a]ctuarial [s]ervices or in selecting a specific [a]ctuary or firm to perform [a]ctuarial [s]ervices.” This determination is not always made by a present or prospective principal. For example, regulators and legislators may be influenced by actuaries’ representations in their work for principals or in their lobbying or other published statements to alter

proposed legal requirements to require the use of an actuary. Careful attention to the impact that advertising and business communication will have on principals and other users of an actuary’s work can make a strong contribution to protecting any actuary’s reputation for professional integrity.

The Code devotes considerable attention to the actuary’s responsibility to principals, but it should be noted that the actuary can place appropriate limits on those responsibilities. An actuary is not required to provide professional services to any particular principal and is not required to remain in a professional relationship with a principal who proves to be deceitful, unreliable, or untrustworthy. An actuary may withdraw from a professional relationship with a principal, subject to whatever agreements the actuary may have with the principal and to the requirements of law. Through retainer letters, employment contracts, and other agreements, actuaries may also limit the use of their work products, protect their own financial interests as described above, and otherwise define the scope and nature of their responsibilities to their principals. Substantial compliance with the Code and appropriate disclosure generally are key to successful fulfillment of the responsibilities arising out of the actuary’s relationship with the principal.

# Relationships With Other Users

An actuary performs professional services on behalf of a principal and has substantial responsibilities to the principal as a result. However, auditors, regulators, business associates of the principal, lending institutions, rating agencies, legislators, courts, and others may use and rely upon the actuary's work with or without the actuary's knowledge. Corporate shareholders, policyholders, employee benefit plan participants and beneficiaries and others also indirectly benefit from the actuary's services. They may use the actuary's conclusions even if they have no relationship with the actuary or are not, in fact, aware of the actuary's roles, for example, in helping to protect the solvency of employee benefit plans, insurance companies and other financial entities.

Laws and regulations may impose upon actuaries specific responsibilities to various classes of users of their work products. For example, federal pension law directs the enrolled actuary to act on behalf of plan participants when calculating the required annual contribution for a defined benefit pension plan. State or federal courts may also determine that an actuary has a legal responsibility to a third party user of the actuary's work product, particularly if the actuary had actual knowledge of the third party's use of the work and intended to influence the third party in some way. The actuary's legal responsibilities to third parties vary among jurisdictions and typically are best addressed by appropriate legal advice. Some actuaries believe that, where a third party is likely to make use of an actuary's work product, it may be beneficial to consult an attorney concerning the actuary's legal liability to that third

party.

The Code does not render an actuary responsible to third party users of the actuary's work beyond the requirements imposed by law, but the Code does impose upon the actuary certain responsibilities that may be indirectly beneficial to parties other than the actuary's principal. Precept 1's requirement that the actuary act with honesty, integrity, and competence when providing professional services indirectly benefits third party users by enhancing the quality and reliability of the actuary's work. This requirement is clarified in Annotation 1-2 of the Code, which requires the actuary to refuse to provide professional services if the actuary has reason to believe that such services may be used to violate or evade the law. In the absence of this precept, it might be easier for principals to use actuaries' work to mislead regulators or otherwise avoid their legal responsibilities. This annotation indicates that, if an actuary has reason to believe that the actuary's work will be misused, the appropriate action is to resolve the matter through discussions with the principal or, failing appropriate resolution, to decline to provide the services.

Precept 5 of the Code requires the actuary in an actuarial communication to identify, as appropriate, the actuary's principal and the capacity in which the actuary serves. This precept allows users of the work product other than the principal to understand the relationship between the principal and the actuary, facilitating an informed appreciation of the actuary's role that can enhance the user's understanding of the actuary's professional findings and conclusions.

Precept 8 of the Code benefits third party users of the actuary's work by

requiring the actuary to take reasonable steps to ensure that the actuary's services will not be used to mislead other parties. The Code does not make the actuary responsible if a principal misuses the actuary's work product. It merely directs the actuary to recognize the possibility that the actuary's work may be misquoted, misunderstood or otherwise misused and to address that possibility by complying with Precept 4 and including appropriate limitations on the distribution and utilization of the actuary's communications. Some actuaries include limitations on the distribution and use of their work products in retainer letters or other agreements with their principals. Some actuaries also find it prudent to include in their actuarial communications language which:

- explains the nature, scope, intended use and intended audience of the work product;
- warns against other uses of the work product or reliance on the work product by other audiences;
- discourages the reader from using the work product in part rather than in whole;
- discourages reliance on the work product without the advice of a qualified actuary; or
- otherwise puts the reader on notice of relevant aspects of the work product.

Statements concerning the nature and scope of the actuary's reliance on other parties to provide data, analysis or conclusions can also be helpful.

Sometimes, compliance with Precept 8, when considered with Precept 1's

requirement not to provide professional services if the actuary knows they may be used to violate or evade the law or be detrimental to the profession, may put the actuary in a difficult position. Precept 8 is the one precept in the Code that specifically appears to place the interests of other users of the actuary's work ahead of the interests of the principal if the principal is attempting to misuse the actuary's work. For example, a life insurance company actuary who lobbies for valuation regulation favorable to the actuary's employer may need to adopt a position in conflict with the interests of others who would be affected by any resulting valuation law or regulation. In addition, the position taken by the actuary may not be in the best interest of the regulators, whom the actuary is trying to influence, in their role as servants of the public interest. These situations usually can be most easily resolved by the actuary taking reasonable steps to ensure the quality of the work product and clearly stating its point of view and intended use. It may also be beneficial to explain to principals and other users the importance of Precept 8's requirements, emphasizing that placing appropriate limits on the use of the actuary's work ultimately enhances its credibility and value.

It is not always easy for an actuary to determine whether or not a work product is likely to be misused. In some instances, it will be obvious that the principal intends to defraud or mislead a regulator, plan participant, policyholder or other third party by misstating the actuary's conclusions. The Code prohibits actuaries from participating in fraud.

More often, however, the principal will not clearly indicate an intent to misuse the work, and the actuary may not have any objective reason to doubt the principal's good faith. In such cases, actuaries meet

their obligations under Precept 8 by taking appropriate steps to ensure that their work products are clear and appropriate to the circumstances and intended audience and contain the necessary caveats to put a third party reader on notice of the nature and scope of the actuaries' conclusions. The Code does not require the actuary to ascertain a principal's unstated intent to misuse the actuary's work or to prevent such misuse if the actuary has no reason to know of it.

There may also be situations where a principal unintentionally misuses the actuary's work product, raising the question of whether, and to what extent, the actuary has a responsibility to correct this misuse. For example, an actuary might prepare a report calculating life expectancies based on a valuation mortality table. Company management takes the report out of context and uses it to make a point in the sales material used to promote its products that would be more appropriately made using life expectancies based on an experience table (that was not loaded for conservatism). The mistake is an honest one, made by someone not familiar with the differences between

valuation and experience tables, and the use of the actuary's work is sufficiently removed from the original purpose of the actuary's report that the actuary could not have reasonably anticipated it. In such a case, the Code would not require the actuary to prevent the mistake, nor does the Code specifically require the actuary to correct the error. However, some actuaries believe it is preferable to rectify such misuse when it is otherwise appropriate to do so.

Third party users of the actuary's work can also derive collateral benefit from the actuary's compliance with other precepts of the Code. Some actuaries believe that compliance with the Code is essential to achievement of a high level of professionalism, and that such professionalism benefits, directly or indirectly, all parties whose interests are affected by the actuary's work. The actuary should not be held responsible for the conduct of other individuals (company management, sales agents, regulators and others) who hold a more direct relationship to various third parties or who deliberately misuse the actuary's work.

# Relationships with the Public

The Code recognizes that the actuarial profession has a responsibility to the general public and that individual actuaries should act in a manner to fulfill that responsibility. However, this does not mean that an individual actuary is personally responsible to each member of the general public regardless of whether the actuary has a professional relationship to or has sought to influence that person. Rather, it means that actuaries who comply with the Code and meet their appropriate professional responsibilities to principals and other users of the actuary's work product indirectly benefit the general public as well.

An actuary's substantial compliance with the Code is viewed by some actuaries as sufficient to meet the actuary's responsibilities to the general public under the Code. They would argue that any larger duty to the public is a duty that belongs to the profession as a whole, rather than to any individual actuary. Some of these actuaries would also contend that the profession fulfills its responsibility to the public by maintaining and enforcing high standards of professional conduct, practice and qualifications for its members, and that the general public benefits from the profession's collective adherence to the Code.

One exception may be for actuaries who

voluntarily take on heightened responsibilities to the public through their choice of employment or other activities or relationships in which they may become involved. Actuaries who provide professional services to consumer advocacy groups, for example, treat those groups as their principals, but their work has a strong element of public interest which, arguably, gives them a more direct relationship with the public than actuaries working in the private sector have. Similarly, regulatory actuaries' work involves a strong element of public interest even though it is usually the agencies by which they are employed or the legislatures to which they report, and not individual members of the public at large, that are their principals for purposes of compliance with the Code.

In evaluating an actuary's relationship with the public, one must recognize that the general public does not have a uniform self interest. Often, even actuaries who serve or choose to serve a public interest may find themselves representing only a segment of the broader general public. This segment may have interests which will tend to be more uniform. In this work, it is generally appropriate for the actuary to consider that segment as a principal and apply the Code appropriately.

# Relationships with the Profession

An actuary who becomes a member of any actuarial organization that has adopted the Code has a responsibility to comply with the Code. Failure to do so renders the actuary subject to the profession's counseling and discipline procedures and can result in the actuary being formally reprimanded by a membership organization or suspended or expelled from membership.

To facilitate compliance, the Code requires the actuary to be familiar with and keep current with the Code. The Academy and its sister organizations publish the Code in their *Yearbooks* and on their Web sites and often publish articles on compliance with the Code in their newsletters. Actuaries use these publications to educate themselves on compliance with the Code and to keep informed as changes to the Code are proposed and adopted.

Compliance with the Code includes a responsibility to comply with applicable law. The Code specifically provides that, if the Code and the law conflict, the law takes precedence. Actuaries who believe they have identified a conflict between the Code and applicable law generally find it prudent to consult an attorney for clarification or to contact the ABCD to obtain guidance on applying the Code. When such a conflict exists, the Code neither requires nor prohibits the actuary from disclosing the conflict and the fact that the actuary complied with the law. Some ASOPs, however, require the actuary to expressly disclose compliance with law in such circumstances.

The Code also provides that an actuary who provides professional services in another country is subject not only to the

Code, but also to applicable laws and ethical standards that have been adopted by a "Recognized Actuarial Organization" (*i.e.*, an organization that is a full member of the International Actuarial Association or a standard-setting, counseling or disciplinary body of that organization) in that country. If the actuary is not fluent in the local language, the Code requires the actuary to obtain any necessary translations of applicable laws and rules of conduct.

The Code contains several precepts that address important aspects of the relationship between the actuary and an actuarial organization or the profession as a whole. Precept 12 requires the actuary to use membership titles and designations granted by an organization only in a manner that conforms to practices authorized by the organization. For example, the Academy's Board of Directors has published in the Academy's Yearbook approved specific practices for use of titles and designations.

Precept 13 offers specific guidance on how to address another actuary's apparent, material violation of the Code. The Code requires an actuary who becomes aware of another actuary's apparent, material violation of the Code to consider discussing the matter with the other actuary, unless the actuaries are operating in an adversarial environment such as litigation. If the matter can be resolved through such discussion, no further action is needed. However, if the actuary elects not to undertake such a discussion or if the discussion does not resolve the matter, the actuary is required to report the apparent breach to the ABCD or other appropriate body outside the United States. Although some actuaries are uncomfortable with this precept, an actuary

who complies with it provides an important service to the profession. If actuaries are to maintain their collective good reputation, it is important that the profession identify and address breaches of the Code by individual actuaries.

Precept 14 requires the actuary to cooperate fully with the profession's counseling and disciplinary bodies. In the United States, those bodies include the ABCD and the discipline committees of the actuarial organizations. The successful operation of the ABCD is fundamental to maintaining the actuarial profession's credibility. The ABCD functions best when actuaries cooperate with investigations and provide the ABCD with the necessary information to fulfill its assigned functions.

When an actuary serves on an Academy committee or makes a public statement as a representative of a membership organization, the actuary is bound by the Code to the extent that it is applicable. For example, real or apparent conflicts may arise between the interests of the organization and the interests of the actuary's principal. As another example, public statements

developed for a membership organization typically should be consistent with any applicable ASOPs and should reflect the unbiased professional judgment of the actuaries who developed it. Some of the actuarial membership organizations have adopted policies explicitly requiring their members to comply with the Code when acting on the organizations' behalf.

Most fundamentally, to maintain good relationships within the profession, actuaries comply with the Code of Professional Conduct. Some actuaries believe that compliance with Precept 1 of the Code is particularly important. They emphasize not only the precept's requirements to perform professional services with integrity and competence but also its emphasis on upholding the profession's reputation.

Actuaries disagree on the extent to which their private conduct (*i.e.*, conduct unrelated to their professional practice) should be subject to the Code. However, some actuaries find it prudent to keep in mind their obligation not to injure the profession's reputation as they go about their daily activities.

# Seeking Guidance

Actuaries may find themselves in situations where it is difficult to balance the interests of the various users of their work products or where the application of the Code is not clear. The actuarial profession has established sources of guidance to help actuaries understand and satisfy their professional obligations.

The ABCD is a useful source of confidential guidance on the actuary's professional responsibilities. Actuaries can contact the ABCD by mail, e-mail, or telephone and seek clarification of the Code or assistance in applying the Code in a particular situation. The guidance is offered on a confidential basis by individual ABCD members or, if the actuary prefers, by the ABCD as a whole. The purpose of the guidance is to help actuaries to resolve ethical dilemmas and to practice in a highly professional manner. Many actuaries have found the ABCD's confidential guidance useful enough to seek it on more than one occasion.

Questions concerning the Qualification Standards and the Code's requirement not to perform work unless qualified to do so can be directed to the Academy's Committee on Qualifications. Guidance offered by the

committee is confidential and is intended to help actuaries determine whether they satisfy applicable qualification requirements. Many actuaries find the committee's guidance on continuing education particularly helpful.

Peer review can greatly assist an actuary in complying with applicable ASOPs and, thereby, producing a work product that meets the actuary's responsibilities to the principal. Many actuaries have established peer review programs in their offices or have arranged for outside actuaries to peer review their work. For assistance in understanding the various types and levels of peer review and how to put a peer review program into place, actuaries may read the discussion paper on peer review published by the committee in 1997 and available on the Academy's Web site.

The Academy has also published practice notes to assist actuaries in complying with various ASOPs and regulatory requirements. Practice notes are not binding upon the actuary, nor do they purport to be ASOPs. However, they do offer practical, informal guidance that actuaries find useful. The practice notes are available on the Academy's Web site.