



Disciplinary Procedures for Actuarial Members of the American Retirement Association

These Disciplinary Procedures (“Rules of Procedure”) shall apply to all actuarial members of any Division of Membership of the American Retirement Association (the “Association”), in effect as amended July 22, 2021. The current Divisions of Membership are: (1) American Society of Pension Professionals and Actuaries (“ASPPA”); (2) American Society of Enrolled Actuaries (“ASEA”); (3) National Association of Plan Advisors (“NAPA”); (4) National Tax-deferred Savings Association (“NTSA”); and (5) Plan Sponsor Council of America (“PSCA”).

An Actuary or “actuarial member” is an Association Member who is an Actuary as defined in the Association Code of Conduct.

A. Receipt of Complaints Against Actuarial Members

1. a. The Executive Director of ASEA, or his or her delegate, shall receive formal complaints alleging violations of the Code of Professional Conduct for Actuaries (hereinafter the “Actuarial Code”), applicable to an Actuary.

b. A complaint shall not be considered formally made unless received by the Executive Director of ASEA, or his or her delegate, in writing. A complaint shall not be considered formally made if it is submitted anonymously. Complaints may be submitted confidentially through electronic means at complaint@usaretirement.org.

2. The Executive Director of ASEA, or his or her delegate, shall refer any complaint applicable to an Actuary to the Actuarial Board for Counseling and Discipline (“ABCD”), or such other appropriate national organization with whom ASEA has entered into a formal agreement designating such other national organization as responsible for actuarial counseling and discipline in the nation where the alleged violation occurred.

3. For purposes of these Rules of Procedure, formal complaints alleging violations of the Actuarial Code by a member who is an Actuary shall also include, but not be limited to, notifications regarding any of the following:

a. any action taken by an agency or any governing body, whether governmental or not, that has authority over the professional conduct of the member (*e.g.*, the Joint Board for Enrollment of Actuaries (“JBEA”), Securities and Exchange Commission (“SEC”), the Department of Labor (“DOL”), the Internal Revenue Service (“IRS”), the Financial Industry Regulatory Authority (“FINRA”), a state insurance commission, etc.);

b. a conviction of a felony;

c. the loss of a civil action related to the member’s profession; or

d. a written allegation of a violation of the Association’s Professional Code of Conduct or of behavior that would violate the Association’s Professional Code of Conduct.

4. An actuarial member whose activities are the subject of review is hereinafter referred to as the “Subject Actuary.”

5. If the Executive Director of ASEA, or his or her delegate, receives a recommendation of disciplinary action from a body referenced in this paragraph A. against a Subject Actuary, then the Executive Director of ASEA, or his or her delegate, shall refer the complaint to the President of ASEA, who shall form a Disciplinary Panel under paragraph B1.

6. All written communications with the Subject Actuary shall be made by certified mail or a private delivery service (*e.g.*, UPS or Federal Express) with signature required upon delivery. If the Subject Actuary (or his or her designee) does not sign for any such communication, then all future written communications with the Subject Actuary shall not require signature upon delivery. For purposes of these disciplinary procedures, a written communication to the Subject Actuary is deemed made on the date received by the Subject Actuary, and a written communication from the Subject Actuary is deemed made on the date postmarked. Notwithstanding the foregoing, communications with the Subject Actuary may be made by electronic mail, if so agreed by the Subject Actuary and the Executive Director.

B. Disciplinary Panel Process

1. Upon receipt of a recommendation of disciplinary action under paragraphs A.5, the President of ASEA shall appoint a Disciplinary Panel. The Disciplinary Panel shall consist of five (5) members of ASEA who are not members of the ASEA Leadership Council (“ALC”). Such Disciplinary Panel shall be responsible for investigating complaints against a Subject Actuary alleging violations of the Actuarial Code and for determining whether and to what extent disciplinary action is appropriate.

2. The President of ASEA shall designate a member of the Disciplinary Panel to serve as Chair of the Panel.

3. The Chair of the Disciplinary Panel, in consultation with the Executive Director of ASEA, or his or her delegate, may engage legal counsel to advise the Disciplinary Panel and the Association.

4. In the case of a complaint against a Subject Actuary alleging violations of the Actuarial Code, the Disciplinary Panel shall review the complaint and shall conduct an investigation, which, in the Panel’s discretion, may include, in consultation with the Executive Director of ASEA, or his or her delegate, fact-finding as deemed necessary. The Panel, in consultation with the Executive Director of ASEA, or his or her delegate, may delegate any fact-finding or investigation to a member of ASEA who is not on the ALC or the Panel (the “Investigator”). The Investigator may be removed and/or replaced by the Chair of the Panel, in consultation with the Executive Director of ASEA, or his or her delegate, at any time for any reason.

5. The Executive Director of ASEA, or his or her delegate, shall provide written notice to the Subject Actuary. This notice shall:

a. advise the Subject Actuary of the charge(s) made, cite the specific Actuarial Code violations that are alleged, provide a copy of these Rules of Procedure;

b. list the members who will serve on the Disciplinary Panel and any member to whom fact-finding or investigation has been delegated by the Panel, and advise the Subject Actuary of the right to object to any Panel member or any Investigator he or she believes might have an actual or potential conflict of interest, provided that he or she must state the basis for that conflict in writing within 30 days of receipt of this notice. In the event that the Subject Actuary objects to a Panel member or any Investigator, the Chair (or, in the event that the person alleged to have the conflict is the Chair, the President of ASEA) shall determine, in consultation with the Executive Director of ASEA, or his or her delegate, if an actual conflict exists and if so determined, shall appoint a special replacement Panel member or Investigator without a conflict of interest to consider the matter; and

c. advise the Subject Actuary of the right to submit any relevant evidence in writing which should be considered by the Panel or any Investigator within 30 days of receipt of the notice

6. If either a Disciplinary Panel or the Investigator is replaced for any reason, notice regarding the selection of a new Panel member or Investigator shall be given to the Subject Actuary and the Subject Actuary shall have the right to object to the new Panel member or Investigator as set forth in paragraph B.5.b., above. Such notification and objection periods can run concurrently with any other notification and objection periods contained in these Disciplinary Procedures.

7. Following the completion of any fact-finding or investigation deemed necessary by a Disciplinary Panel, the Chair of the Panel shall schedule a hearing at which the Subject Actuary shall have the right to appear personally, with or without counsel, at the expense of the Subject Actuary, to explain why any disciplinary action is not warranted in the matter or to present any mitigating factors for the Panel to consider.

8. a. General Rule. The Executive Director of ASEA, or his or her delegate, shall provide written notice of the hearing to the Subject Actuary, including the time, date, and place where the Disciplinary Panel will consider the matter not less than 60 days in advance of the hearing. The notice shall include a copy of any written report submitted to the Panel by an Investigator. The 60-day time limit may be waived, or extended, by mutual written consent of both the Panel and the Subject Actuary. The notice shall also advise the Subject Actuary of the right to appear at the Panel hearing, with or without counsel, at the expense of the Subject Actuary, and that any factual materials or evidence which he or she wishes to be considered by the Panel must be submitted in writing at least 15 days in advance of the hearing. The notice shall provide that the Subject Actuary must notify the Executive Director of ASEA, or his or her delegate, in writing within 30 days of receipt of the notice regarding the scheduled hearing whether the Subject Actuary intends on attending the hearing. In the absence of any response to the notice of hearing by the Subject Actuary it shall be presumed that the Subject Actuary waives his or her right to attend the hearing.

b. Non-Cooperation by Subject Actuary. In the event the Subject Actuary fails to cooperate at any point during the complaint review process (*e.g.*, he or she fails to sign for any written

communications from the Disciplinary Panel, or its delegate, or the Investigator; or fails to respond to any request for information from the Panel, or its delegate), the Executive Director of ASEA, or his or her delegate, shall provide written notice of the hearing to the Subject Actuary, including the time, date, and place where the Panel will consider the matter not less than 30 days in advance of the hearing. The notice shall include a copy of any written report submitted to the Panel by an Investigator. The 30-day time limit may be waived, or extended, by mutual written consent of both the Panel and the Subject Actuary. The notice shall also advise the Subject Actuary of the right to appear at the Panel hearing, with or without counsel, at the expense of the Subject Actuary, and that any factual materials or evidence which he or she wishes to be considered by the Panel must be submitted in writing at least 15 days in advance of the hearing. The notice shall provide that the Subject Actuary must notify the Executive Director ASEA, or his or her delegate, in writing within 15 days of receipt of the notice regarding the scheduled hearing whether the Subject Actuary intends on attending the hearing. In the absence of any response to the notice of hearing by the Subject Actuary it shall be presumed that the Subject Actuary waives his or her right to attend the hearing. In the event the Subject Actuary cooperates during the complaint review process, then the timeframes in this paragraph shall no longer apply to such Subject Actuary (*e.g.*, the timeframes in paragraph B.8.a. above shall apply from that point on).

c. Felony Criminal Conviction of Subject Actuary. In the event the Subject Actuary is convicted of a felony, the Executive Director of ASEA, or his or her delegate, shall provide written notice of the hearing to the Subject Actuary, including the time, date, and place where the Disciplinary Panel will consider the matter not less than 30 days in advance of the hearing. The notice shall include a copy of any written report submitted to the Panel by an Investigator. The 30-day time limit may be waived, or extended, by mutual written consent of both the Panel and the Subject Actuary. The notice shall also advise the Subject Actuary of the right to appear at the Panel hearing, with or without counsel, at the expense of the Subject Actuary, and that any factual materials or evidence which he or she wishes to be considered by the Panel must be submitted in writing at least 15 days in advance of the hearing. The notice shall provide that the Subject Actuary must notify the Executive Director of ASEA, or his or her delegate, in writing within 15 days of receipt of the notice regarding the scheduled hearing whether the Subject Actuary intends on attending the hearing. In the absence of any response to the notice of hearing by the Subject Actuary it shall be presumed that the Subject Actuary waives his or her right to attend the hearing.

9. Copies of any written notices sent to the Subject Actuary shall be provided to the members of the Disciplinary Panel and the President of ASEA.

10. A hearing of a Disciplinary Panel shall require a quorum of at least 3 Panel members to be present. If there is no quorum present because of circumstances reasonably beyond the control of the Panel members, or the Subject Actuary is not present because of circumstances reasonably beyond his or her control, the hearing shall be rescheduled to a date mutually agreeable between the parties, but in no event more than 60 days following the date of the initially scheduled hearing. At the discretion of the Executive Director, the hearing shall be held in-person or virtually via a video-conferencing platform (*e.g.*, via Zoom, Teams, Skype, Webex, or similar). If the Subject

Actuary waives his or her right to a hearing, the Executive Director, or his or her delegate, shall so advise the Panel members and the Panel may, in its discretion, hold the hearing via video conference. Any decision of the Panel shall require a majority of the Panel members present and voting. However, any decision by a Panel to counsel, reprimand, suspend or expel the Subject Actuary shall require 3 affirmative votes, even in cases where only a quorum of 3 members of the Panel are present. Members of the Panel who are not in attendance at the hearing in person or by video conference may not vote (or provide another Panel member with a proxy) on the outcome.

11. A Disciplinary Panel decision to counsel the Subject Actuary shall not be published. If the decision involves reprimand, then the result of this action may be published in the appropriate venue. If the decision involves suspension or expulsion, then the result of this action shall be published in the appropriate venue.

12. A transcript shall be made of the hearing of a Disciplinary Panel, except in the case of a hearing by video conference, by a court reporter selected by ASEA. No other recording of the hearing will be permitted. In the case of a hearing by video conference, a written report of the hearing will be prepared by the Chair of the Panel. Because the hearing is intended to address the professional conduct of the Subject Actuary, dialogue between the Subject Actuary and Panel members, and any Investigator, if present, should not be impeded by formal legal rules of evidence or procedure. There shall be no evidence presented by the Subject Actuary or considered by the Panel that was not provided in writing at least 15 days prior to the date of the hearing.

13. At a hearing attended by the Subject Actuary, the Subject Actuary may make an oral presentation of reasonable length and respond to any questions posed by the Panel members. The Subject Actuary may be accompanied by legal counsel and may consult with such counsel. However, the role of such counsel shall be limited to providing advice to the Subject Actuary and explaining relevant legal principles. Any Investigator who conducted fact-finding or investigation as delegated by the Panel may be asked to attend the hearing. The Panel and the Subject Actuary may submit questions to any Investigator present at the hearing.

14. The deliberations of a Panel shall be limited to Panel members, the Association's Chief Executive Officer, or his or her delegate, the Executive Director ASEA, or his or her delegate, and any counsel to the Association or to ASEA.

15. A Panel decision shall be based on the written report of the appropriate actuarial investigatory body, if relevant, the fact-finding or investigation by the Panel, whether or not delegated to another member, any investigation, written report or action taken by an agency of a governing body, whether governmental or not, that has authority over the professional conduct of the Subject Actuary (*e.g.*, the JBEA, SEC, DOL, IRS, FINRA, a state insurance commission, etc.), and any evidence submitted in writing by the Subject Actuary at least 15 days in advance of the hearing. In reaching its decision the Panel shall consider without limitation the intent of the Subject Actuary, whether the violation was willful, the economic loss or other harm caused by the conduct alleged, the seriousness of the violation, the experience of the Subject Actuary, any alleged prejudicial material errors in the process of the investigatory body, if relevant, and any other factors the Panel deems appropriate including matters presented at the hearing. The Panel may also take into consideration whether the Subject Actuary has been disciplined before and the Chair of the

Panel is authorized to inquire with the Association's Chief Executive Officer, or his or her delegate, the Executive Director of ASEA, or his or her delegate, or any other body in this regard. In its discretion, the Panel may conclude that a further hearing, and, if necessary, further fact finding or investigation, is required.

16. The decision of a Disciplinary Panel shall include a written report of its findings and the rationale for the conclusion and the disciplinary action chosen. If a Disciplinary Panel determines that a violation of the Actuarial Code has occurred, the decision should cite the specific Actuarial Code provisions violated and explain how the Subject Actuary's conduct constituted an Actuarial Code violation.

17. The decision of a Disciplinary Panel shall be provided to the Subject Actuary by the Executive Director of ASEA, or his or her delegate, within 30 days after the decision is reached. Copies of the Panel decision shall be provided to the President of ASEA, or his or her delegate, the Association's Chief Executive Officer, or his or her delegate, and the ASEA Professional Conduct Committee.

18. The decision of a Disciplinary Panel shall be considered final and binding unless written notice of appeal is submitted by the Subject Actuary to the Executive Director of ASEA, or his or her delegate, within 45 days of receipt of the decision of the Panel. If the Subject Actuary fails to request an appeal, a copy of the Panel decision shall be provided to the authorized representative of the appropriate actuarial investigatory body, if any.

E. Appeals for Disciplinary Process

1. The Subject Actuary shall be entitled to appeal the decision of a Disciplinary Panel by submitting a written request for an appeal to the Executive Director of ASEA, or his or her delegate, within 45 days from receipt of the Disciplinary Panel decision. The 45-day time limit may be extended by mutual written consent of the parties.

2. Upon the receipt of the written request for appeal of a Disciplinary Panel decision, the President of ASEA shall designate five (5) members of the ALC who do not have a conflict of interest, as eligible to serve on an Appeals Panel to be provided to the Subject Member by the President of ASEA, or his or her delegate. If five (5) members of the ALC without a conflict of interest cannot be found, the President of ASEA shall appoint (a) special actuary member(s) to the Appeals Panel who is not a member of the ALC and does not have a conflict of interest to complete the formation of the Appeals Panel. Individuals who served on the Disciplinary Panel are ineligible to serve on the Appeals Panel.

3. The President of ASEA, or his or her delegate, shall notify the Subject Actuary in writing of the names of the five (5) members of the Appeals Panel. Within 30 days of receipt of this written notice, the Subject Actuary shall advise the President of ASEA, or his or her delegate, of any Appeals Panel member he or she believes might have an actual or potential conflict of interest, provided that he or she must state the basis for that conflict in writing. In the event that the Subject Actuary objects to an Appeals Panel member, the President of ASEA (or, in the event that the person alleged to have the conflict is the President of ASEA, the President-Elect of ASEA) shall

determine, in consultation with the Executive Director of ASEA, or his or her delegate, if an actual conflict exists and if so determined, shall appoint another member to the Appeals Panel. The Subject Actuary shall select three (3) of those designated ALC members to serve on the Appeals Panel and provide those choices to the President of ASEA, or his or her delegate. The President of ASEA shall select one of those three (3) to serve as the Chair of the Appeals Panel and shall so notify the three (3) Appeals Panel members, the Subject Actuary and the Executive Director of ASEA, or his or her delegate. The Appeals Panel shall act on behalf of the ALC.

4. In the event of a request for appeal by the Subject Actuary, the full written record, decision, and findings of the Disciplinary Panel shall be made available to the Appeals Panel by the Executive Director of ASEA, or his or her delegate. The appeal shall be based entirely upon the written record and shall not include any appearance by the Subject Actuary but may include a written submission by the Subject Actuary, and any reply submission by the Chair of the Disciplinary Panel. Any written submission by the Subject Actuary must be submitted within 60 days following the date of the written request for appeal.

5. The Appeals Panel shall conduct and complete the appeal within 90 days after receipt of the request for appeal. The Appeals Panel may affirm, modify or reverse the decision of the Disciplinary Panel. A decision to do other than affirm shall require a determination by the Appeals Panel that: (1) the Disciplinary Panel's determinations were clearly erroneous and, absent such errors, a different action is warranted; (2) the Disciplinary Panel failed to conform to the Rules of Procedure in a manner that was unduly prejudicial and which led to an unwarranted result; or (3) the disciplinary action imposed by the Disciplinary Panel was inconsistent with the seriousness of the Code violation(s) or the harm that was done. The decision of the Appeals Panel shall require the vote of at least 2 members of the Appeals Panel.

6. The Appeals Panel decision shall include a written statement of the Appeal Panel's findings and conclusions and shall be provided to the Subject Actuary, the Chair of the Disciplinary Panel, the Association President, the President of ASEA, the Executive Director of ASEA, or his or her delegate, and the authorized representative of the appropriate actuarial investigatory body, if any. The Appeals Panel decision shall be final.

F. Confidentiality of Process

1. All proceedings with respect to communications, investigations, and deliberations as provided in these Rules of Procedure, shall be confidential.

2. Notwithstanding the above, should there be any unauthorized disclosure of information by the Subject Actuary with respect to these confidential proceedings, the Association shall have the right to respond to such disclosure by providing factual information about the deliberations and proceedings.

3. The President of ASEA shall notify the members of ASEA via an appropriate written or electronic publication of ASEA in all instances in which a Disciplinary Panel orders public disciplinary action. Notification shall not be given until the time to appeal has expired or, in the event of an appeal, until such appeal has been resolved. At the same time notification is given to

the members, the President of ASEA shall also give notice of any disciplinary action to the appropriate actuarial investigatory body, if relevant, and to other persons or organizations, including governmental entities, which, in the opinion of a President of ASEA, in consultation with the Executive Director of ASEA, or his or her delegate, should also receive notice of the action as being in the best interest of the public.

4. In the event of subsequent reinstatement of the Subject Actuary, at the request of such member, the President of ASEA shall give notice of such action to all members of ASEA via an appropriate written or electronic publication of ASEA and to entities previously advised of the public disciplinary action.

5. For a listing of any members of ASEA that are currently subject to disciplinary action please send your request to discipline@usaretirement.org.

G. Disposition

Upon the completion of an appeal, or in the case of ineligibility for appeal or in the case of no appeal upon the expiration of the period for appeal, the President of ASEA, in consultation with the Executive Director of ASEA, or his or her delegate, shall initiate the action necessary to comply with the final order. In the event of public disciplinary action, the President of ASEA shall be responsible for notifying the membership of ASEA, and any other organizations or entities, as provided above. Such disclosure shall not take place until at least two (2) business days after the Subject Actuary has received notice of the final decision or otherwise reasonable efforts have been made to effect that notification. In the event that a Disciplinary Panel hearing or the appeal results in no public disciplinary action, the President of ASEA shall authorize the specified private disciplinary action, if any. In all cases, the matter shall otherwise continue to be treated in a confidential manner, with all records of the hearing and any appeal sealed and retained by the Association Office under the control of the Association's Chief Executive Officer, or his or her delegate. The members of the Disciplinary Panel or Appeals Panel, the Association President, the President of ASEA, the Association's Chief Executive Officer, or his or her delegate, or the Executive Director of ASEA, or his or her delegate, may, however, be required to divulge such records by court order or other legal process in some circumstances, or as necessary to fulfill their appointed functions.

H. Report on Activities

The Executive Director of ASEA shall issue an annual written report prior to the end of each calendar year to the Association's Board of Directors and to ASEA membership that shall include a description of its discipline activities for the calendar year, including commentary on the types of cases pending, resolved, and dismissed. This annual report shall be subject to the confidentiality requirements and provisions set forth above.