

American Retirement Association Disciplinary Procedures for Non-Actuarial Members

These Disciplinary Procedures (“Rules of Procedure”) shall apply to all non-actuarial members of any Division of Membership of the American Retirement Association (the “Association”), effective June 17, 2016. The current Divisions of Membership are: (1) American Society of Pension Professionals and Actuaries (“ASPPA”); (2) ASPPA College of Pension Actuaries (“ACOPA”); (3) National Association of Plan Advisors (“NAPA”); and (4) National Tax-deferred Savings Association (“NTSA”).

A. Receipt of Complaints Against Non-Actuarial Members

1.
 - a. The Executive Director of a non-actuarial member’s primary Division of Membership, or his or her delegate, shall receive formal complaints alleging violations of the Association Code of Professional Conduct (hereinafter the “Association Code”).
 - b. A complaint shall not be considered formally made unless received by the Executive Director of the member’s primary Division of Membership, 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. If a complaint does not allege violations against an actuarial member, the Chair of the Professional Conduct Committee, or his or her delegate, in consultation with the Executive Director of the member’s primary Division of Membership, or his or her delegate, shall determine if the complaint alleges violations that fall within the purview of the Association Code. Complaints within such purview shall be referred to the Professional Conduct Committee.
3. For purposes of these Rules of Procedure, formal complaints alleging violations of either the Actuarial Code or the Association Code by a member 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 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; or
 - c. The loss of a civil action related to the member’s profession.

4. For purposes of these Rules of Procedure, the determination by the Executive Directors of each Division of Membership, in conjunction with the CEO of ARA, or his or her delegate, of a member's primary Division of Membership shall be determined in the following order:

- a. If he or she is an actuary, then ACOPA shall be his or her primary Division of Membership
- b. If he or she is a member of only one non-ACOPA Division of Membership, then that Division of Membership shall be his or her primary Division of Membership.
- c. If he or she is a member of more than one non-ACOPA Division of Membership, then
 - i. If he or she is a credentialed member of only one non-ACOPA Division of Membership, then that Division of Membership shall be his or her primary Division of Membership
 - ii. If i. above does not apply, then his or her primary Division of Membership shall be determined by the subject matter of the complaint (*e.g.*, if the complaint relates to investment advice, then his or her primary Division of Membership would be NAPA)
 - iii. If neither i. or ii. above apply, then, if the subject matter of the complaint is unrelated to his or her affiliation with any Division of Membership (*e.g.*, embezzlement from his or her employer), then his or her primary Division of Membership shall be the Division of Membership to which he or she has belonged for the longest period of time.

B. Formation of a Disciplinary Panel from the Professional Conduct Committee

1. The Professional Conduct Committee shall consist of at least 15 members (at least 5 from each non-ACOPA Division of Membership; provided that members from the ASPPA Division of Membership may also be members of the ACOPA Division of Membership). The President of the Association shall annually appoint a member (credentialed member preferred) from one of the non-ACOPA Divisions of Membership as Chair of the Professional Conduct Committee for the next calendar year. The Chair of the Professional Conduct Committee, in consultation with the President of the Association and the President of each non-ACOPA Division of Membership, shall appoint the other members (credentialed members preferred) of the Professional Conduct Committee. At no time shall the Professional Conduct Committee include (a) more than 2 members who are also voting members of the Association's Board of Directors, and (b) more than 1 member who is also a voting member of the Leadership Council of each non-ACOPA Division of Membership (*e.g.*, each non-ACOPA Division of Membership could have member of its Leadership Council on the Professional Conduct Committee).

2. The member whose activities are the subject of review by a Disciplinary Panel is hereinafter referred to as the "Subject Member."

3. If the Professional Conduct Committee receives a complaint against a Subject Member who is not an actuary alleging violations of the Association Code, the Chair of the Professional Conduct Committee, or his or her delegate, working with the President of the Subject Member's primary Division of Membership (or his or her delegate), shall form a Disciplinary Panel consisting of 5 members from the Professional Conduct Committee, 4 of whom must represent the Subject Member's primary Division of Membership (the fifth member of the Disciplinary Panel must represent one of the other non-ACOPA Divisions of Membership). If 5 members of the Professional Conduct Committee without a conflict of interest cannot be found, the Chair of the Professional Conduct Committee, or his or her delegate, working with the President of the member's primary Division of Membership (or his or her delegate), shall appoint (a) special member(s) to the Disciplinary Panel who is not also a voting member of the Association's Board of Directors to complete formation of the Disciplinary Panel. Such Disciplinary Panel shall be responsible for investigating complaints against a Subject Member alleging violations of the Association Code and for determining whether and to what extent disciplinary action is appropriate.

4. If the Chair of the Professional Conduct Committee is serving on the Disciplinary Panel, he or she shall serve as Chair of the Disciplinary Panel. Otherwise, the Chair of the Professional Conduct Committee, or his or her delegate, shall designate a member of the Disciplinary Panel to serve as Chair of the Disciplinary Panel.

5. The Chair of the Disciplinary Panel, in consultation with the Association's Chief Executive Officer, or his or her delegate, may engage legal counsel to advise the Disciplinary Panel and the Association.

6. All written communications with the Subject Member 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 Member (or his or her designee) does not sign for any such communication, then all future written communications with the Subject Member shall not require signature upon delivery. For purposes of these disciplinary procedures, a written communication to the Subject Member is deemed made on the date received by the Subject Member, and a written communication from the Subject Member is deemed made on the date postmarked.

C. Consideration of Disciplinary Action

1. In the case of a complaint against a non-actuarial member alleging violations of the Association Code, the Disciplinary Panel shall review the complaint and shall conduct an investigation, which, in the Disciplinary Panel's discretion, may include, in consultation with the Executive Director of the member's primary Division of Membership, or his or her delegate, fact-finding as deemed necessary. The Disciplinary Panel, in consultation with the Executive Director of the Subject Member's primary Division of Membership, or his or her delegate, may delegate any fact-finding or investigation to a member of the Subject Member's primary Division of Membership who is not on the Professional Conduct Committee or the Disciplinary Panel (the "Investigator"). The Investigator may be removed and/or replaced by the Chair of the Disciplinary Panel, in consultation with the Executive Director of the member's primary Division of Membership, or his or her delegate, at any time for any reason.

2. The Executive Director of the Subject Member's primary Division of Membership, or his or her delegate, shall provide written notice to the Subject Member in the case of a complaint against a non-actuarial member alleging violations of the Association Code. This notice shall:

a. advise the Subject Member of the charge(s) made, cite the specific Association Code violations that are alleged, and 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 Disciplinary Panel, and advise the Subject Member of the right to object to any Disciplinary 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 Member objects to a Disciplinary 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 the Subject Member's primary Division of Membership) shall determine, in consultation with the Executive Director of the Subject Member's primary Division of Membership, or his or her delegate, if an actual conflict exists and if so determined, shall appoint a special replacement Disciplinary Panel member or Investigator without a conflict of interest to consider the matter); and

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

3. If either a Disciplinary Panel member or the Investigator is replaced for any reason, notice regarding the selection of a new Disciplinary Panel member or Investigator shall be given to the Subject Member and the Subject Member shall have right to object to the new Disciplinary Panel member or Investigator as set forth in paragraph C.2.b., above. Such notification and objection periods can run concurrently with any other notification and objection periods contained in these Disciplinary Procedures.

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

5. a. General Rule. The Executive Director of the Subject Member's primary Division of Membership, or his or her delegate, shall provide written notice of the hearing to the Subject Member, 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 Disciplinary Panel by an Investigator. The 60-day time limit may be waived, or extended, by mutual written consent of both the Disciplinary Panel and the Subject Member. The notice shall also advise the Subject Member of the right to appear at the Disciplinary Panel hearing, with or without counsel, at the expense of the Subject Member, 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 Member must notify the Executive Director of the Subject Member's primary Division of Membership, or his or her delegate, in writing within 30 days of receipt of the notice regarding the scheduled hearing whether the Subject Member intends on attending the hearing. In the absence of any response to the notice of hearing by the Subject Member it shall be presumed that the Subject Member waives his or her right to attend the hearing.

b. Non-Cooperation by Subject Member. In the event the Subject Member fails to cooperate at any point during the complaint review process (*e.g.*, he or she fails to sign for any written communications from either the Disciplinary Panel, or its delegate, or the Investigator; or fails to respond to any request for information from the Disciplinary Panel, or its delegate, or Investigator), the Executive Director of the Subject Member's primary Division of Membership, or his or her delegate, shall provide written notice of the hearing to the Subject Member, 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 Disciplinary Panel by an Investigator. The 30-day time limit may be waived, or extended, by mutual written consent of both the Disciplinary Panel and the Subject Member. The notice shall also advise the Subject Member of the right to appear at the Disciplinary Panel hearing, with or without counsel, at the expense of the Subject Member, 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 Member must notify the Executive Director of the Subject Member's primary Division of Membership, or his or her delegate, in writing within 15 days of receipt of the notice regarding the scheduled hearing whether the Subject Member intends on attending the hearing. In the absence of any response to the notice of hearing by the Subject Member it shall be presumed that the Subject Member waives his or her right to attend the hearing. In the event the Subject Member cooperates during the complaint review process, then the timeframes in this paragraph shall no longer apply to such Subject Member (*e.g.*, the timeframes in C.5.a. above shall apply from that point on).

c. Felony Criminal Conviction of Subject Member. In the event the Subject Member has been convicted of any felony, the Executive Director of the Subject Member's primary Division of Membership, or his or her delegate, shall provide written notice of the hearing to the Subject Member, 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 Disciplinary Panel by an Investigator. The 30-day time limit may be waived, or extended, by mutual written consent of both the Disciplinary Panel and the Subject Member. The notice shall also advise the Subject Member of the right to appear at the Disciplinary Panel hearing, with or without counsel, at the expense of the Subject Member, 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 Member must notify the Executive Director of the Subject Member's primary Division of Membership, or his or her delegate, in writing within 15 days of receipt of the notice regarding the scheduled

hearing whether the Subject Member intends on attending the hearing. In the absence of any response to the notice of hearing by the Subject Member it shall be presumed that the Subject Member waives his or her right to attend the hearing.

6. Copies of any written notices sent to the Subject Member shall be provided to the members of the Disciplinary Panel and the President of the Subject Member's primary Division of Membership.

7. A hearing of the Disciplinary Panel shall require a quorum of at least 3 Disciplinary Panel members to be present. If there is no quorum present because of circumstances reasonably beyond the control of the Disciplinary Panel members, or the Subject Member 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. If the Subject Member waives his or her right to a hearing, the Executive Director of the Subject Member's primary Division of Membership, or his or her delegate, shall so advise the Disciplinary Panel members and the Disciplinary Panel may, in its discretion, hold the hearing by teleconference. Any decision of the Disciplinary Panel shall require a majority of the Disciplinary Panel members present and voting. However, any decision by a Disciplinary Panel to counsel, reprimand, suspend or expel the Subject Member shall require 3 affirmative votes, even in cases where only a quorum of 3 members of the Disciplinary Panel are present. Members of the Disciplinary Panel who are not in attendance at the hearing in person or by teleconference may not vote (or provide another Disciplinary Panel member with a proxy) on the outcome.

8. A Disciplinary Panel decision to counsel 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.

9. A transcript shall be made of the hearing of the Disciplinary Panel, except in the case of a hearing by teleconference, by a court reporter selected by the Subject Member's primary Division of Membership. No other recording of the hearing will be permitted. In the case of a hearing by teleconference, a written report of the hearing will be prepared by the Chair of the Disciplinary Panel. Because the hearing is intended to address the professional conduct of the Subject Member, dialogue between the Subject Member and Disciplinary 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 Member or considered by the Disciplinary Panel that was not provided in writing at least 15 days prior to the date of the hearing.

10. At a hearing attended by the Subject Member, the Subject Member may make an oral presentation of reasonable length and respond to any questions posed by the Disciplinary Panel members. The Subject Member 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 Member and explaining relevant legal principles. Any Investigator who conducted fact-finding or investigation as delegated by the Disciplinary Panel may be asked to attend the hearing. The

Disciplinary Panel and the Subject Member may submit questions to any Investigator present at the hearing.

11. The deliberations of the Disciplinary Panel shall be limited to Disciplinary Panel members, the Association's Chief Executive Officer, or his or her delegate, the Executive Director of the Subject Member's primary Division of Membership, or his or her delegate, and any counsel to the Association or the Subject Member's primary Division of Membership.

12. The Disciplinary Panel decision shall be based on the written report of the appropriate actuarial investigatory body, if relevant, the fact-finding or investigation by the Disciplinary 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 Member (*e.g.*, the SEC, DOL, IRS, FINRA, a state insurance commission, etc.), and any evidence submitted in writing by the Subject Member at least 15 days in advance of the hearing. In reaching its decision the Disciplinary Panel shall consider without limitation the intent of the Subject Member, 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 Member, any alleged prejudicial material errors in the process of the investigatory body, if relevant, and any other factors the Disciplinary Panel deems appropriate including matters presented at the hearing. The Disciplinary Panel may also take into consideration whether the Subject Member has been disciplined before and the Chair of the Disciplinary Panel is authorized to inquire with the Association's Chief Executive Officer, or his or her delegate, the Executive Director of the Subject Member's primary Division of Membership, or his or her delegate, or any other body in this regard. In its discretion, the Disciplinary Panel may conclude that a further hearing, and, if necessary, further fact finding or investigation, is required.

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

14. The decision of the Disciplinary Panel shall be provided to the Subject Member by the Executive Director of the Subject Member's primary Division of Membership, or his or her delegate, within 30 days after the decision is reached. Copies of the Disciplinary Panel decision shall be provided to the President of the Subject Member's primary Division of Membership, or his or her delegate, the Association's Chief Executive Officer, or his or her delegate, and the Professional Conduct Committee. The decision of the Disciplinary Panel shall be considered final and binding unless written notice of appeal is submitted by the Subject Member to the Executive Director of the Subject Member's primary Division of Membership, or his or her delegate, within 45 days of receipt of the decision of the Disciplinary Panel.

D. Appeals

1. The Subject Member shall be entitled to appeal the decision of the Disciplinary Panel by submitting a written request for an appeal to the Executive Director of the Subject Member's primary Division of Membership, 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, the Association President shall designate 5 members of the Association's Board of Directors (4 of whom must represent the Subject Member's primary Division of Membership and the fifth member must represent one of the other non-ACOPA Divisions of Membership), 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 Executive Director of the Subject Member's primary Division of Membership, or his or her delegate. The Appeals Panel may not include any member of the Professional Conduct Committee.
3. The Executive Director of the Subject Member's primary Division of Membership, or his or her delegate, shall notify the Subject Member in writing of the names of the 5 members of the Association's Board of Directors selected. Within 30 days of receipt of this written notice, the Subject Member shall advise the Executive Director of the Subject Member's primary Division of Membership, 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 Member objects to an Appeals Panel member, the Association President (or, in the event that the person alleged to have the conflict is the Association President, the President-Elect of the Association) shall determine, in consultation with the Executive Director of the Subject Member's primary Division of Membership, or his or her delegate, if an actual conflict exists and if so determined, shall appoint another member to the Appeals Panel. The Subject Member shall select 3 of those designated Board members (at least 2 of whom must represent the Subject Member's primary Division of Membership) to serve on the Appeals Panel and provide those choices to the Executive Director of the Subject Member's primary Division of Membership, or his or her delegate. The Association President shall select one of those 3 to serve as the Chair of the Appeals Panel and shall so notify the 3 Appeals Panel members, the Subject Member and the Executive Director of the Subject Member's primary Division of Membership, or his or her delegate. The Appeals Panel shall act on behalf of the Association's Board of Directors.
4. In the event of a request for appeal by the Subject Member, the full written record, decision, and findings of the Disciplinary Panel shall be made available to the Appeals Panel by the Executive Director of the Subject Member's primary Division of Membership, or his or her delegate. The appeal shall be based entirely upon the written record and shall not include any appearance by the Subject Member but may include a written submission by the Subject Member, and any reply submission by the Chair of the Disciplinary Panel. Any written submission by the Subject Member 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 Member, the Chair of the Disciplinary Panel, the Association President, the President of the Subject Member's primary Division of Membership, and the Executive Director of the Subject Member's primary Division of Membership, or his or her delegate. The Appeals Panel decision shall be final.

E. 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 Member 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 the Subject Member's primary Division of Membership shall notify the members of the Subject Member's primary Division of Membership via an appropriate written or electronic publication of the Subject Member's primary Division of Membership in all instances in which the 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 the Subject Member's primary Division of Membership shall also give notice of any disciplinary action to other persons or organizations, including governmental entities, which, in the opinion of the Disciplinary Panel, in consultation with the Executive Director of the Subject Member's primary Division of Membership, 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 Member, at the request of such member, the President of the Subject Member's primary Division of Membership shall give notice of such action to all members of the Subject Member's primary Division of Membership via an appropriate written or electronic publication of the Subject Member's primary Division of Membership and to entities previously advised of the public disciplinary action.

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

F. Disposition

Upon the completion of an appeal, or in the case of no appeal upon the expiration of the period for appeal, the President of the Subject Member's primary Division of Membership, in consultation with the Executive Director of the Subject Member's primary Division of Membership, 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 the Subject Member's primary Division of Membership shall be responsible for notifying the membership of the Subject Member's primary Division of Membership, and any other organizations or entities, as provided above. Such disclosure shall not take place until at least 2 business days after the Subject Member has received notice of the final decision or otherwise reasonable efforts have been made to effect that notification. In the event that the Disciplinary Panel hearing or the appeal results in no public disciplinary action, the President of the Subject Member's primary Division of Membership 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 the Subject Member's primary Division of Membership, the Association's Chief Executive Officer, or his or her delegate, or the Executive Director of the Subject Member's primary Division of Membership, 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.

G. Report on Activities

The Chair of the Professional Conduct Committee shall issue an annual written report prior to the end of each calendar year to the Association's Board of Directors, the Leadership Council of each Division of Membership and to the membership of all Divisions of Membership that shall include a description of its 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.