

[48-1025-M]

Joint Board for the Enrollment of Actuaries

20 CFR Part 901

[REG-159704-03]

RIN 1545-BC82

Performance of Actuarial Services Under the Employee Retirement Income Security Act of 1974

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This document contains proposed amendments to 20 CFR part 901 relating to the enrollment of actuaries under section 3042 of the Employee Retirement Income Security Act of 1974 (ERISA). The proposed amendments would update the eligibility requirements for performing actuarial services for ERISA-covered employee pension benefit plans, including the continuing education requirements, and the standards for performing such actuarial services. The proposed amendments would affect employee pension benefit plans and the actuaries providing actuarial services to those plans.

DATES: Written or electronic comments must be received by November 20, 2009.

ADDRESSES: Send written comments to: CC:PA:LPD:PR (REG-159704-03), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8:00 a.m. and 4:00 p.m. to CC:PA:LPD:PR (REG-159704-03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC or sent

electronically via the Federal eRulemaking Portal at www.regulations.gov (IRS REG-159704-03).

FOR FURTHER INFORMATION CONTACT: Patrick McDonough, Executive Director, Joint Board for the Enrollment of Actuaries, (202) 622-8229 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information referenced in this notice of proposed rulemaking were previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-0951, relating to Enrolled Actuaries under Employee Retirement Income Security Act of 1974, published on September 7, 1988, in the **Federal Register** (53 FR 34484). There are no proposals for substantive changes to this collection of information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains proposed amendments to 20 CFR Part 901 under section 3042 of the Employee Retirement Income Security Act of 1974 (88 Stat. 829), Public Law 93-406 (ERISA). Section 3042 of ERISA provides that the Joint Board for the Enrollment of Actuaries (Joint Board) shall, by regulations, establish reasonable standards and qualifications for persons performing actuarial services with respect to plans subject to ERISA and, upon application by any individual, shall enroll such individual if the Joint Board finds that such individual satisfies such standards and qualifications. Section 3042 also provides that the Joint Board may, after notice and an opportunity for a hearing, suspend or terminate the enrollment of an individual who fails to discharge his duties under ERISA or who does not satisfy the requirements for enrollment.

Consistent with section 3042, the Joint Board has promulgated regulations at 20 CFR Part 901, addressing eligibility for enrollment, requirements for continuing education of enrolled actuaries, professional standards for performance of actuarial services under ERISA, bases for disciplinary actions and the procedures to be followed in taking those actions. Comprehensive regulations regarding section 3042 were last issued in 1988 (53 FR 34484). The Joint Board has determined that the regulations need to be updated to reflect changes in the law and in industry practice. In addition to these proposed regulations, final regulations relating to user fees for the initial enrollment and reenrollment as an enrolled actuary were published in the **Federal Register** on December 21, 2007 (72 FR 72606).

In anticipation of amending the Joint Board regulations, the Joint Board issued a Request for Information (RFI) which was published in the **Federal Register** on June 30,

2004 (69 FR 39376). The RFI specifically requested comments as to whether, and to what extent, changes should be made to the regulations in the following five areas:

1. Procedures and conditions for enrollment and reenrollments;
2. Continuing professional education (CPE) requirements;
3. Waivers of the CPE requirements;
4. Types of enrollment statuses (active, inactive, and retired); and
5. Standards of conduct.

Eight comments were received.

The current regulations prescribe various rules regarding the enrollment and reenrollment of actuaries. Section 901.13 of the regulations provides that an individual applying for enrollment must satisfy requirements for: (1) qualifying experience; (2) basic actuarial knowledge; and (3) pension actuarial knowledge. Basic actuarial knowledge may be demonstrated by passing a Joint Board examination (or an examination acceptable to the Joint Board) regarding basic actuarial mathematics and methodology, or by earning a degree pertaining to actuarial mathematics from an accredited college. Pension actuarial knowledge must be demonstrated by passing a Joint Board examination (or an examination acceptable to the Joint Board) in actuarial mathematics related to pension plans.

Under section 901.11, an enrolled actuary must reenroll once every three years. To qualify for reenrollment an actuary must complete a minimum of 36 hours of continuing education credit within the preceding three year period.¹ Of these 36 hours, at least one-half must consist of core subject matter, which is subject matter directly

¹ The regulations also include transitional rules for reenrollment cycles prior to 1993. This summary refers to the rules currently applicable.

related to the performance of actuarial services under ERISA or the Internal Revenue Code (Code). The remaining hours may consist of non-core subject matter. The regulations provide examples of both core and non-core subject matter. The regulations provide that the Executive Director of the Joint Board may review the CPE records of an enrolled actuary to verify compliance with these rules.

The regulations also provide that the continuing education must be provided as part of a “qualifying program” conducted by a “qualifying sponsor.” A qualifying program is (1) a “formal program” (which requires the attendance of at least three individuals engaged in substantive pension service), (2) a correspondence or individual study program, or (3) a program utilizing teleconferencing. A qualifying sponsor is an accredited educational institution, an organization recognized by a State licensing body, or an organization recognized by the Joint Board under a sponsor agreement in effect for a given enrollment cycle. A qualifying sponsor must ensure that the CPE program satisfies various requirements regarding subject matter and administration, including recordkeeping. A separate provision applies to the recordkeeping requirements for the enrolled actuary.

In addition to attending CPE programs, an enrolled actuary may earn CPE credits by serving as an instructor or speaker at a CPE program, publishing articles on topics directly related to the CPE requirements, serving on a Joint Board advisory committee, participating in the preparation of Joint Board examinations, passing examinations sponsored by recognized organizations, or by passing a Joint Board pension law actuarial examination. These alternative means for earning CPE credits are subject to various requirements and limitations.

In the event an enrolled actuary applies for renewal but fails to comply with the applicable requirements, the regulations provide that the enrolled actuary shall be notified of his or her failure and given an opportunity to provide additional information. If the enrolled actuary fails to provide any additional information (or fails to apply for reenrollment) the actuary will be placed in inactive status for a period of three years (beginning on the date that renewal would have been effective) and will be ineligible to perform services as an enrolled actuary during this time. An individual placed in inactive status must file an application for renewal and satisfy the requirements for renewal within three years or his enrollment will terminate. If an individual's enrollment is terminated, it can only be reestablished by satisfying the requirements for initial enrollment.

The regulations also provide that an individual may request placement in an inactive retirement status during which time the actuary will be ineligible to perform services as an enrolled actuary. An individual placed in this status may be reinstated by completing the required CPE credits for the applicable period.

Section 901.20 of the regulations prohibits an enrolled actuary from performing actuarial services under various circumstances including when the actuary is not qualified to perform the service, where the actuary has reasonable grounds to believe his or her services will be used in a fraudulent manner, or where there is a conflict of interest. The section also requires that an enrolled actuary must exercise due care, skill, and diligence in providing his or her pension actuarial services and proper utilization of the enrolled actuary designation.

Explanation of Provisions

The submitted comments and the related proposed changes to the regulations may be divided into the five categories of the RFI.

A. Procedures for Enrollment and Reenrollment

Various comments were received regarding the materials covered by the enrolled actuary examinations. Several comments supported broadening the scope of the material to include matters unrelated to defined benefit plans, such as the funding of post-retirement medical and life insurance benefits within the meaning of Code sections 419 and 419A. To the extent that an enrolled actuary may need to practice before the IRS in these areas, one comment suggested that an enrolled actuary should be permitted to work together with a qualified health actuary. In contrast, another comment suggested focusing the examinations exclusively on pension actuarial issues under ERISA and the Code. Some comments called for a stronger emphasis on the selection of actuarial assumptions. One such comment acknowledged that the subject is not easily tested, but made suggestions as to how this could be done.

Another comment proposed eliminating requirements for the examinations to cover specific materials and instead have the regulations grant the Joint Board the authority and flexibility to prescribe relevant and current topics.

There were also suggestions regarding the process and form of testing. One comment suggested that focusing each examination question on a single concept (instead of multiple concepts as is done currently) would enable a candidate to avoid losing credit for an entire question if he/she responds correctly to all but one of the concepts being tested. It was also suggested that the regulations allow more flexibility in the number of exams and that they clarify any time limit for their completion.

One comment recommended the use of computer-based testing and other emerging alternative testing procedures, and coordination of changes in the Joint Board examinations with related examinations offered by recognized organizations.

There was general agreement among the comments in keeping the current qualifying experience requirement unchanged although one comment suggested that the regulations require that an applicant's actuarial experience be certified by an enrolled actuary.

No changes are made under the proposed regulations to the materials covered by either the basic actuarial examination or to the examination for pension actuarial knowledge. The Joint Board believes that the provisions of the current regulations regarding the general form and structure of the examinations, as updated from time to time, are adequate.

The proposed regulations, however, would require that the pension actuarial examination must be completed within the ten-year period immediately preceding the date of application for initial enrollment. The Joint Board believes such a requirement is needed because of the frequent changes in pension law and a need for an enrolled actuary to have current knowledge of pension requirements.² On the other hand, because the material in the basic actuarial examination is generally mathematical in nature and is not affected by changes in pension law, a similar rule for the basic actuarial examination would not apply.

With respect to computer-based testing, the Joint Board acknowledges that new technologies can serve many uses. The Joint Board believes, however, that the

² This rule would be applied prospectively. Accordingly, the successful completion of a pension actuarial examination prior to the effective date of this regulation will be recognized for ten years after such effective date.

language in the current regulations would not preclude the use of computer-based testing and does not believe it is necessary to amend the regulations to specify the format for taking examinations.

With respect to qualifying experience, the proposed regulations would require that all actuarial and pension actuarial experience be certified in writing by individuals with knowledge of the individual's experience. If the individual's supervisor is not an enrolled actuary, the pension actuarial experience must be certified by both the supervisor and an enrolled actuary with knowledge of the individual's pension experience. As in the current regulations, the qualifying experience must have been completed within the last 10 years before the application for enrollment.

B. CPE Requirements

Several comments were received regarding the distinction between core and non-core subject matter. One comment suggested that the distinction between core and non-core subject matter be eliminated for purposes of meeting CPE requirements as the distinction does not serve a useful purpose in a rapidly evolving financial marketplace and regulatory environment. The comment added that, assuming these core/non-core categories were kept, additional guidance should be provided as to what constitutes core and non-core credit subject matter.

Other comments suggested that the list of core subject matter be expanded to include such topics as pension accounting, Code sections 419, 419A and 420, risk theory, and finance. Another comment specifically supported adding pension accounting, but objected to counting investment topics as core topics. Another comment recommended including various additional topics in an expanded list of

acceptable non-core topics such as defined contribution plans, Social Security and Medicare benefits, pension valuation software programming, other accounting, risk management and new emerging topics in actuarial practice. Another comment recommended replacing the core/non-core classification with three new categories: (1) retirement plan rules under ERISA and the Code (including, but not limited to, sections 401 through 420), (2) funding issues in relation to defined benefit plans, and (3) actuarial ethics. This comment also suggested requiring at least 45 hours of CPE credit (with a minimum of three hours in funding issues and in actuarial ethics) and granting the Joint Board the authority to designate additional mandatory areas of CPE. One comment recommended that the definition of “core” subject matter should continue to be focused on pension actuarial services under ERISA and the Code and opposed any expansion of the definition of core subject matter.

Some comments suggested distinguishing between CPE credits required early in an actuary’s career, where core courses may be necessary to help cement the actuary’s understanding of actuarial principles, and credits needed later in an actuary’s career. One comment suggested, for example, that 18 hours of core CPE credit be required for the first two enrollment cycles and that 12 hours of core credit be required in subsequent enrollment cycles. It was also suggested that a minimum of three hours of ethics be required.

Many comments, particularly from sponsors of CPE programs, requested flexibility in the use of the web and other alternatives to formal meetings. For example, some suggested that computer-based self-study or distance learning programs and webcasts should be included as qualifying CPE programs. A number of comments

sought additional guidance from the Joint Board regarding the use of webcasts and self-study programs to earn CPE credits. The issues raised in this regard included the need for appropriate safeguards and mechanisms to validate participation by the actuary. In recognition that future technological advances are almost certain to occur, another comment recommended that the regulations be revised to allow a qualifying sponsor to apply to the Joint Board for approval to use those technologies. The comment also suggested that the regulations specifically give the Joint Board the authority to permit the use of those emerging technologies, with acceptance of the technology being communicated via a public announcement without requiring the Joint Board to further update the regulations.

One comment recommended permitting actuaries to attest in their professional capacities to their completion of continuing education credit, and the establishment of an appropriate audit process to oversee compliance with the rules. The comment further recommended that the Joint Board undertake random audits of CPE records to ensure compliance with the attestation requirement. Similarly, another comment recommended an enrolled actuary should be required to certify that he/she has satisfied certain CPE requirements and to provide information regarding whether or not he/she has been disciplined or is under disciplinary review by any professional body.

One comment suggested that the requirement that a formal program be attended by at least three individuals engaged in substantive pension service may be satisfied, in the case of programs viewed simultaneously at multiple locations via teleconference, web cast, conference call or other similar technology, if the total combined audience at all locations contains at least three such individuals.

Several comments recommended various electronic means to retain records and to streamline the application process. One comment recommended that a qualifying sponsor be required to keep electronic copies of the session materials, but make them accessible to the Joint Board should they need to be reviewed or audited for content. Another comment recommended that the Joint Board provide for on-line renewal of enrollment and an on-line process for an actuary to respond to an audit of his/her CPE credits. A third comment recommended that all records be maintained electronically and that CPE credit hours be provided and stored electronically, enabling the Joint Board to have access to the credit hours earned by actuaries at all times and reducing the volume of hard copy recordkeeping.

One comment recommended extending the enrollment cycle to 5 years with an increase in the required CPE credits to 60 hours, including a minimum of 8 hours in each year of the cycle. Another comment suggested that the current CPE requirement (36 credit hours over a three year cycle) is appropriate, with some possible refinements such as either reducing the credits that could be earned for each hour as a presenter and increasing the current limit on such credits as a portion of total CPE; allowing CPE credits as a co-author (if not the primary author); or withholding session credit to an attendee for inattentive or disruptive conduct.

One comment suggested that the regulations should provide guidance on renewal of approval for qualifying sponsors. There were a few comments that suggested changing the enrollment cycle for qualifying sponsors so as not to be coterminous with the enrolled actuary enrollment cycle or to increase the number of years in the sponsor enrollment cycle. Another comment suggested the regulations be

amended to allow the Joint Board to periodically publish a list of qualifying sponsors in order to facilitate a search for programs that are eligible for CPE credits.

The Joint Board continues to believe that an important thrust of CPE should be core subject matter that is directly related to pension actuarial services under ERISA and the Code, an area in which an enrolled actuary must maintain minimum competencies at all times. The Joint Board also believes that there are other relevant non-core topics that enhance the knowledge of enrolled actuaries and keep them current in matters related to the performance of pension actuarial services. The proposed regulations would provide a revised definition of “core” subject matter which the Joint Board believes will be helpful in distinguishing between core and non-core subject matter. The lists of core and non-core subject matter are generally unchanged, but the proposed regulations would provide that all materials included on the syllabi of any of the pension actuarial examinations offered by the Joint Board during the current and immediately preceding enrollment cycles would constitute core subject matter. The Joint Board also invites further comments in this area.

With respect to CPE programs, the proposed regulations would clarify the permissible forms of qualifying programs. The regulations would also retain the use of alternative means for completion of CPE, but continue to limit the portion of total CPE that may be earned under these alternative approaches. The regulations would also add a provision that awards CPE credits to a co-author of a publication or a person listed as a major contributor to a publication.

The proposed regulations would also clarify the responsibilities of program sponsors by requiring that those who submit requests to the Executive Director to be

recognized as qualifying sponsors include sufficient information in their requests to establish that their programs would satisfy the applicable requirements for qualifying programs.

The Joint Board agrees that new technologies allow enrolled actuaries and qualifying sponsors more flexibility in their choices of form and delivery of CPE programs and should be reflected when granting CPE credits. However, new technologies also raise new challenges regarding verification of attendance and completion of CPE under certain programs. Therefore, the proposed regulations would allow qualifying programs to include both formal programs as well as correspondence or individual study programs (including audio and/or video taped programs) and teleconferencing (including web casts) provided that the qualifying program meets certain requirements with regard to verification of attendance and measurement of completion.

The Joint Board also agrees that recordkeeping provisions under the current regulations should be updated. The proposed regulations would amend the recordkeeping requirements to place more reliance on qualifying sponsors to maintain records of the course content since they generally maintain records of that content in any event. The enrolled actuaries will now be required only to retain certificates of completion and/or instruction as evidence of satisfaction of CPE requirements. In addition, the proposed regulations would expressly allow the Joint Board to request CPE records from the enrolled actuary and the qualifying sponsor. The regulations do not reflect any changes in the method used to provide information to the office of the

Executive Director. However, the Board is willing to consider web-based applications or other technology for this information in the future.

With respect to the renewal cycle and required CPE credits, the Joint Board continues to believe that the current three-year renewal period is appropriate. The Board, however, proposes to delay the start date for the renewal cycle for qualifying sponsors by one year after the renewal cycle for enrolled actuaries in order to ease the administrative demands on the Executive Director and his staff, and to facilitate renewals by qualifying sponsors.

The proposed regulations would also retain the current requirement for a total of 36 hours of CPE (half of which must be core subject matter) for the initial three-year enrollment renewal cycle, for individuals who renew on a timely basis. Recognizing, however, that experienced actuaries generally do not need to focus on core topics as much as newly enrolled actuaries, the proposed regulations would reduce the number of core CPE credits required after the enrolled actuary's initial enrollment renewal from 18 required core hours to 12 required core hours. The Joint Board also believes that enrolled actuaries should maintain high professional standards and thus proposes a new requirement that a minimum of two hours of core CPE be allocated to ethical standards in each enrollment cycle. Topics that would meet this requirement include (but are not limited to) discussions of professional codes of conduct, professional responsibilities, and any of the topics addressed in section 901.20 of these proposed regulations.

The Joint Board believes that formal programs should continue to play a prominent role in fulfilling CPE requirements because of the additional learning

opportunities that occur in face-to-face interactions with other enrolled actuaries. Therefore, no change is proposed to the current requirement that a formal program must have at least three individuals in attendance who are engaged in substantive pension service. Furthermore, the proposed regulations would add a new requirement that a minimum of one-third of the required total CPE credits must be in the form of formal programs.

The proposed regulations would also retain current limits on the maximum number of CPE credits that can be obtained under alternative CPE programs, such as authoring published articles (25 percent), as a percentage of total CPE per enrollment cycle. Under the proposed regulations, however, college courses will no longer be available as an alternative program for purposes of fulfilling CPE requirements (unless they meet the requirements of a qualifying program) due to the practical difficulties in evaluating course curricula and the qualifications of the instructors. Despite the elimination of the specific list of conditions that would support a waiver, circumstances such as extended active military duty will continue to constitute strong evidence of the type of extraordinary circumstances that would justify a waiver.

C. Waivers of the CPE Requirements

One comment suggested expanding the list of conditions for which a waiver from CPE requirements may be granted to include parental leave. Another comment recommended that applications for a waiver of the CPE requirements be accepted during the normal enrollment renewal process, subject to the Joint Board's discretion to accept late filings. A third comment did not perceive problems with the current waiver

process and standards. There were no other specific recommendations regarding this issue except in conjunction with proposals regarding changes in enrollment status.

The Joint Board believes that it is essential for practicing actuaries to keep their knowledge current, particularly given the frequent changes in pension law, court decisions, and other factors that affect an enrolled actuary's practice. Accordingly, and in light of the expanded varieties of acceptable CPE programs, the proposed regulations would eliminate the list of reasons for which a CPE waiver may be granted and provide instead that a waiver from the CPE requirements may be granted only under extraordinary circumstances and only upon submission of evidence that every effort was made during the entire renewal cycle to complete such requirements. Despite the elimination of the specific list of conditions that would support a waiver, circumstances such as extended active military duty will continue to constitute strong evidence of the type of extraordinary circumstances that would justify a waiver.

D. Enrollment Status

Several comments were directed to the status for "inactive retirement" which may be elected by an actuary. One comment suggested that the Joint Board allow for some flexibility in the renewal process in order to reduce the need for individuals to request inactive retirement status and to ensure a minimal period of disruption of actuarial services to plans and employers. For example, it was recommended that any CPE credit hours completed between December 31 (or the end of the enrollment period by which CPE credits must be earned for that period) and the date the application for renewal is filed be permitted to be used to satisfy the CPE requirement for renewal of enrollment effective April 1. Thus, the comment stated that an enrolled actuary who

files an application for renewal after March 1 due to delayed completion of the CPE requirement should be eligible to perform services as an enrolled actuary 30 days after the application filing date unless notified otherwise by the Joint Board. However, these delayed CPE credits would not be permitted to be applied to another enrollment cycle.

Under the current regulations, an actuary in inactive retirement status is ineligible to perform services as an enrolled actuary, but the actuary may be reinstated by completing the “required continuing professional education credits for the applicable enrollment cycle” regardless of how long the actuary was inactive. Several comments stated that this status, and the requirements for reinstatement, were unclear. Some comments suggested that inactive retirement status be available for no more than three consecutive three-year enrollment cycles, but that if the individual has been retired for less than three three-year enrollment cycles, the actuary would be allowed to “back fill” any missing CPE requirements.

One comment recommended that the regulations be revised to extend inactive status to six years (or a maximum of two three-year enrollment cycles). The comment stated that three years is too short since an enrolled actuary often leaves the workforce for child-rearing or other reasons, and should not be discouraged from resuming his/her career. Another comment recommended that the regulations be clarified to specify more clearly the CPE requirements for reinstatement as of various points of time during the following three-year cycle, and the relationship of those CPE requirements with the requirements for ongoing renewal after reinstatement. One comment suggested special catch-up requirements where an individual would have to “back fill” any missing CPE requirements (for example, 108 hours of CPE credits would be required for an actuary

who had missed two enrollment renewal cycles, with 36 credits required for each inactive enrollment cycle plus 36 credits required for the enrollment cycle immediately preceding the date on which the individual returns to active status). The comment suggested that any individual who fails to complete the necessary back fill would need to follow current reenrollment procedures. The comment further stated that, depending on the circumstances, a waiver of some CPE requirements may be permitted for an enrolled actuary going from inactive to active status.

The Joint Board agrees that the current rules relative to the different inactive statuses warrant simplification. The proposed regulations would limit enrollment statuses to only two categories, “active” or “inactive,” with special provisions for reinstatement depending on the length of the period during which an enrolled actuary is in inactive status and for those situations where an actuary’s status is terminated for cause. An enrolled actuary who timely renews his/her enrollment would be in active status. An enrolled actuary who fails to meet requirements for timely renewal of enrollment would be in inactive status. While in inactive status, an enrolled actuary would be prohibited from performing pension actuarial services under ERISA and the Code.

The Joint Board also believes that the longer an actuary has been in inactive status, the less likely it is that he/she has kept up with current developments or had the current work experience necessary to competently function as an enrolled actuary. The proposed regulations would increase the CPE requirements and/or add experience requirements for reenrollment for actuaries in inactive status, with more stringent requirements applying to those who have been inactive for a longer period of time.

Under the proposed regulations, an individual who applies for reenrollment during his or her first inactive enrollment cycle would need to complete 36 hours of CPE (including CPE credits from the immediately preceding enrollment cycle) in order to qualify for reenrollment. An individual who applies during the second inactive enrollment cycle would need to complete 48 hours of CPE (counting only those credits earned during the first and second inactive enrollment cycles) and must also have 18 months of certified responsible pension actuarial experience since the start of the first inactive cycle. An individual who applies during the third active enrollment cycle would need to complete 60 hours of CPE (counting only those credits earned during the second and third inactive enrollment cycles) and have 18 months of certified responsible pension actuarial experience since the start of the second inactive cycle. The proposed regulations present some examples to illustrate these changes.

Furthermore, the proposed regulations would limit the time that an enrolled actuary can be in inactive status and remain eligible to apply for reenrollment. If the enrolled actuary does not qualify and apply for reenrollment after being in inactive status for three enrollment cycles, he or she would be placed in terminated status and would have to meet the requirements for initial enrollment (including the applicable examination requirements) in order to be reinstated as an enrolled actuary.

Notwithstanding these general rules for reenrollment from inactive status, any application for reenrollment from termination status due to disciplinary reasons would be subject to special consideration by the Executive Director. An individual placed in inactive status prior to the effective date of the final regulations would be deemed to have been placed in inactive status on that date and thus considered to be in his/her

first inactive enrollment cycle on that date for purposes of determining the requirements for a return to active status.

E. Standards of Conduct

One comment states that the Joint Board has not been very active in investigating and disciplining enrolled actuaries whose performance does not meet applicable standards. One comment suggested that the Joint Board consider utilizing the Actuarial Board for Counseling and Discipline as an independent contractor to investigate complaints. Alternatively, it was recommended that the Joint Board either require an enrolled actuary to become a member of a professional actuarial organization as a condition of enrollment (thereby subjecting the member to the Actuarial Code of Professional Conduct (Code of Conduct) to which all the major actuarial organizations in the U.S. and Canada subscribe), or incorporate the Code of Conduct into the regulations.

Another comment stated that, unlike other professionals, an enrolled actuary is not compelled to operate within certain standards by the underlying threat that failure to do so will result in the loss of his/her license to practice in the profession. Even if an enrolled actuary is a member of an actuarial organization and subject to that organization's disciplinary procedures, this comment suggested that the Joint Board not rely on these organizations in this area, but rather that the Joint Board more actively utilize its current authority under ERISA to supervise and evaluate the provision of actuarial services and to discipline enrolled actuaries. This comment also suggested that the Joint Board periodically publish information regarding the nature and types of complaints received, the number of actuaries disciplined and the nature of the

discipline. This comment indicated that publicizing such information would reassure the public that complaints are being acted upon and encourage compliance with the applicable standards.

Another comment recommended that the Board coordinate with other actuarial or governmental bodies, for example, the IRS or PBGC, so that if any other body finds that an enrolled actuary has violated the standards of conduct, performance or practice relating to the performance of actuarial services, including all applicable regulations and revenue rulings, the respective body will refer the offending individual to the Joint Board for possible suspension or termination of his/her enrollment.

One comment reiterated a concern that actuaries who do not have significant credentials in the health tax area should not be encouraged to engage in unqualified practice under the Code, or in an area where they do not meet the qualification standards in accordance with the Code of Conduct. The commentator recommended that the Joint Board outline those areas where the enrolled actuary may rely on the expertise of another actuary and any qualifications needed for those other actuaries as appropriate.

One comment stated that the standards of performance of actuarial services set forth in current regulations are adequate. The comment suggested, however, in the event the Board were to decide that these standards need to be expanded, that any differences from the Code of Conduct be kept to a minimum or, wherever possible, any expanded regulatory standards should incorporate the applicable parts of the Code of Conduct.

In light of the responses to the RFI regarding actuarial standards of performance, the proposed regulations would clarify existing provisions in this area and add some new provisions. Specifically, the proposed regulations would add a new general standard that would require enrolled actuaries to perform actuarial services in accordance with all applicable laws and the relevant standards of professional responsibility and, as under the current regulations, require that enrolled actuaries not perform any actuarial services where those services may be used in a fraudulent manner. The proposed regulations would also provide that an enrolled actuary must report any material violation of this section by another enrolled actuary to the Executive Director of the Joint Board. For example, an enrolled actuary that replaces another enrolled actuary as a plan's actuary and discovers that the previous actuary had signed a Schedule B that listed plan contributions that the previous actuary knew had not been made would be required to report this violation to the Executive Director.

The proposed regulations would also modify the rules regarding conflicts of interest. The regulations currently provide that in any situation in which an enrolled actuary has a conflict of interest with respect to the performance of actuarial services, the actuary shall not perform such services until full disclosure of the conflict has been made to the affected parties. The proposed regulations would add that such disclosure must be made in writing and that the affected parties must agree in writing to the enrolled actuary performing the services. The proposed regulations would also provide that the actuary must reasonably conclude that his or her ability to act impartially is not impaired by the conflict and the performance of such services is not prohibited by law.

The current regulations also provide that an enrolled actuary must exercise due care, skill, prudence, and diligence to ensure that all actuarial assumptions are reasonable in the aggregate and that all calculations are accurately carried out. To reflect changes made in the law made by the Pension Protection Act of 2006, Public Law 109-280, the proposed regulations would provide that an enrolled actuary must exercise sufficient due care, diligence, skill, and prudence as is required to ensure that all actuarial assumptions are reasonable individually and in combination. The proposed regulations would also require that all calculations not only be accurately carried out but also properly documented.

The proposed regulations would also expressly expand the due diligence requirement into other areas. For example, the proposed regulations would require that an enrolled actuary must exercise due diligence in preparing documents to be filed with Federal and State entities and in determining the correctness of oral and written representations to those entities and to clients. This section of the proposed regulations follows section 10.22(a) of the regulations governing practice before the IRS (Circular 230) except to include other agencies where enrolled actuaries typically file documents or make representations in connection with the performance of pension actuarial services.

The proposed regulations would also include other provisions similar to those in Circular 230 regarding solicitations of employment. For example, the current regulations provide that an enrolled actuary shall not advertise his or her status as an enrolled actuary in any solicitation related to the performance of actuarial services and shall not employ or share fees with any individual who so solicits. The proposed

regulations would modify this prohibition by adding a rule similar to that in section 10.30(a)(1) of Circular 230 by providing that an enrolled actuary may not use any form of public or private solicitation containing a false, fraudulent, or misleading claim. Also, as provided in section 10.30(a)(2) of Circular 230, the proposed regulations would provide that an enrolled actuary may not make uninvited solicitations of employment if the solicitation violates Federal or State law and any lawful solicitations must clearly identify the solicitation as such and, if applicable, identify the source of the information used in choosing the recipient of the solicitation.

The proposed regulations would also include provisions similar to those in Circular 230 regarding the prompt disposition of pending matters and the return of client records, except the Circular 230 rules would be modified for purposes of these regulations to reflect the fact that enrolled actuaries deal with government entities in addition to the IRS. Thus, as under section 10.23 of Circular 230, the proposed regulations would provide that an enrolled actuary may not unreasonably delay the prompt disposition of any matter before the IRS, but the proposed regulations would extend the rule for these purposes to matters before the Department of Labor, the PBGC and other applicable Federal and State entities. Similarly, the proposed regulations would adopt provisions similar to those in section 10.27 of Circular 230 regarding the return and retention of client's records, but they would define "records of the client" for these purposes to include documents related to legal obligations in addition to Federal tax obligations. The provisions of these proposed regulations would not modify the Circular 230 regulations but would apply rules to enrolled actuaries in addition to those already applicable under Circular 230.

The Joint Board believes that the current structure and procedures for the disciplining of enrolled actuaries are adequate and consistent with Federal statutes and so is not proposing any changes to the existing regulations in this regard. The Joint Board emphasizes that anyone, including other members of the profession and plan officials and participants, can make referrals to the Executive Director regarding any suspicious activity or conduct that may warrant further investigation or discipline. The Joint Board is also considering in a separate action amending the application forms for enrollment and renewal to require additional information that may be relevant to standards of performance, including any record of violations of the law or prior misconduct, and requests comments in that regard.

Proposed Effective/Applicability Date

These regulations are proposed to generally apply 30 days after the date these regulations are published as final regulations in the **Federal Register**. However, section 901.11 regarding the enrollment of actuaries would apply to the enrollment cycle beginning January 1, 2011, and ending December 31, 2013, and to all subsequent enrollment cycles.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and therefore the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. This

notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Joint Board specifically requests comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Carolyn Zimmerman, IRS Employee Plans, Tax Exempt and Government Entities Division. However, other personnel from the Joint Board and the IRS participated in their development.

List of Subjects in 20 CFR Part 901

Regulations Governing the Performance of Actuarial Services under the Employee Retirement Income Security Act of 1974.

Proposed Amendments to the Regulations

Accordingly, 20 CFR part 901 is proposed to be amended as follows:

PART 901--REGULATIONS GOVERNING THE PERFORMANCE OF ACTUARIAL SERVICES UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

Paragraph 1. The authority citation for part 901 continues to read in part as follows:

Authority: These rules are issued under authority of 88 Stat. 1002; 29 U.S.C. 1241, 1242. See also 5 U.S.C. 301; 31 U.S.C. 330; and 31 U.S.C. 321

Par. 2. Section 901.0 is amended by revising the second sentence to read as follows:

§901.0 Scope.

* * * Subpart A of this part sets forth definitions and eligibility to perform actuarial services; subpart B of this part sets forth rules governing the enrollment of actuaries; subpart C of this part sets forth standards of performance to which enrolled actuaries must adhere; subpart D of this part sets forth rules applicable to suspension and termination of enrollment; and subpart E of this part sets forth general provisions.

Par. 3. Section 901.1 is amended by:

- A. Adding new paragraph (d)(5).
- B. Revising paragraph (g).
- C. Adding new paragraphs (i), (j) and (k).

The revisions and additions read as follows:

§901.1 Definitions.

* * * * *

(d) * * *

(5) Selection of assumptions.

* * * * *

(g) Enrolled actuary means an individual who has satisfied the standards and qualifications set forth in this part and who has been approved by the Joint Board for the Enrollment of Actuaries (the Joint Board), or its designee, to perform actuarial services required under ERISA or the regulations.

* * * * *

(i) Certified responsible actuarial experience means responsible actuarial experience of an individual that has been certified in writing by the individual's supervisor.

(j) Certified responsible pension actuarial experience means responsible pension actuarial experience of an individual that is certified in writing by the individual's supervisor if the supervisor is an enrolled actuary. If the individual's supervisor is not an enrolled actuary, the pension actuarial experience must be certified in writing by both

the supervisor and an enrolled actuary with knowledge of the individual's pension actuarial experience.

(k) Enrollment cycle means the three year period from January 1, 2011, to December 31, 2013, and every three year period thereafter.

Par. 4. Section 901.10 is amended by revising paragraph (a) to read as follows:

§901.10 Application for enrollment.

(a) Form. As a requirement for enrollment, an applicant shall file with the Executive Director of the Joint Board (the Executive Director) a properly executed application on a form or forms specified by the Joint Board, and shall agree to comply with these regulations and any other guidance as required by the Joint Board. A reasonable non-refundable fee may be charged for each application for enrollment filed.

* * * * *

Par. 5. Section 901.11 is amended by:

- A. Revising the first sentence of paragraph (a).
- B. Revising paragraphs (c) and (d).
- C. Revising paragraph (e), introductory text, (e)(1) and (e)(2)(i).
- D. Revising the last sentence of paragraph (e)(2)(ii).
- E. Adding new paragraphs (e)(2)(iv), (v), and (vi).
- F. Removing paragraph (e)(3).
- G. Revising paragraphs (f)(1), (f)(1)(i).

H. Revising the second sentence of paragraph (f)(1)(ii),
and paragraph (f)(1)(iv).

I. Revising paragraph (f)(2).

J. Adding paragraph (f)(3).

K. Revising paragraph (g).

L. Removing the last two sentences of paragraph (h)(2).

M. Removing paragraph (l).

N. Redesignating paragraphs (i), (j), and (k) as paragraphs (j), (k), and (l),
respectively.

O. Adding and reserving new paragraph (i)

P. Revising newly redesignated paragraphs (j) and (k).

Q. Revising the first sentences of newly redesignated paragraphs (l)(1) and
(l)(2), and the second sentence of newly redesignated paragraph (l)(3).

R. Revising newly redesignated paragraphs (l)(4), (l)(5), (l)(6), and (l)(7), and
the first sentence of newly redesignated paragraph (l)(9).

S. Revising paragraph (n).

T. Adding new paragraphs (o) and (p).

The revisions and additions read as follows:

§901.11 Enrollment procedures.

(a) Enrollment. The Joint Board shall enroll each applicant it determines has met
the requirements of these regulations, and any other guidance as required by the Joint
Board, and shall so notify the applicant. * * *

* * * * *

(c) Rosters. The Executive Director shall maintain rosters of all actuaries who are duly enrolled under this part and of all individuals whose enrollment has been suspended or terminated, or who are in inactive status. The Executive Director may publish any or all of these rosters, including display on the Joint Board's website, to the extent permitted by law.

(d) Renewal of enrollment. To maintain active enrollment to perform actuarial services under ERISA, each enrolled actuary is required to have his/her enrollment renewed as set forth herein.

(1) All enrolled actuaries must file an application for renewal of enrollment on the prescribed form between October 1, 2010, and March 1, 2011, and between October 1 and March 1 of every third year thereafter.

(2) The effective date of renewal of enrollment for individuals who file complete renewal applications by March 1 is the April 1 immediately following the date of application. The effective date of renewal of enrollment for individuals who file complete renewal applications after March 1 is the date the notice of renewal is mailed to that individual by the Joint Board.

(3) Forms required for renewal may be obtained from the Executive Director.

(4) A reasonable non-refundable fee may be charged for each application for renewal of enrollment filed.

(e) Condition for renewal: Continuing professional education. To qualify for renewal of enrollment, an enrolled actuary must certify, on the form prescribed by the Executive Director, that he/she has completed the applicable minimum number of hours of continuing education credit required by this paragraph (e) and satisfied the recordkeeping requirements of paragraph (j) of this section.

(1) Transition rule for renewal of enrollment effective April 1, 2011. (i) A minimum of 36 hours of continuing education credit must be completed between January 1, 2008, and December 31, 2010. Of the 36 hours, at least 18 must consist of core subject matter; the remainder may be non-core subject matter.

(ii) An individual who receives initial enrollment in 2008 or 2009 must satisfy the following requirements by December 31, 2010: Those enrolled during 2008 must complete 24 hours of continuing education; those enrolled during 2009 must complete 12 hours of continuing education. At least one-half of the applicable hours must consist of core subject matter; the remainder may consist of non-core subject matter. For purposes of this paragraph (e), credit will be awarded for continuing education completed after January 1 of the year in which initial enrollment was received.

(iii) An individual who receives initial enrollment during 2010 is exempt from the continuing education requirements until the next enrollment cycle, but must file a timely application for renewal.

(2) For renewal of enrollment effective April 1, 2014, and every third year thereafter. (i) A minimum of 36 hours of continuing education credit must be completed

between January 1, 2011, and December 31, 2013, and between January 1 and December 31 for each three year period subsequent thereto.

(ii) * * * For purposes of this paragraph (e), credit will be awarded for continuing education completed after January 1 of the year in which initial enrollment was received.

* * * * *

(iv) For an individual who was initially enrolled before January 1, 2008 (and who has therefore completed at least one full enrollment cycle as of January 1, 2011), at least 12 hours of the 36 hours of continuing education required for each enrollment cycle must consist of core subject matter; the remainder may consist of non-core subject matter.

(v) For an individual who was initially enrolled on or after January 1, 2008, at least 18 hours of his or her 36 hours of continuing education required for the first full enrollment cycle must consist of core subject matter. Thereafter, for such individuals, for each subsequent enrollment cycle at least 12 hours of the 36 hours must consist of core subject matter. In each instance, the remainder may consist of non-core subject matter.

(vi) As part of the core subject matter required for each enrollment cycle, an individual must complete a minimum of two hours of continuing education credit relating to ethical standards.

(f) Qualifying continuing education--(1) In general. To qualify for continuing education credit an enrolled actuary must complete his/her hours of continuing education credit under a qualifying program, within the meaning of paragraph (f)(2) of this section, consisting of core and/or non-core subject matter. In addition, a portion of the continuing education credit may be earned under the provisions of paragraph (g) of this section. In any event, no less than 1/3 of the total hours of continuing education credit required for an enrollment cycle must be obtained by attending in person a formal program or programs, within the meaning of paragraph (f)(2)(ii)(A) of this section.

(i) Core subject matter is program content and knowledge that is integral and necessary to the satisfactory performance of pension actuarial services and actuarial certification under ERISA and the Internal Revenue Code. Such core subject matter includes the characteristics of actuarial cost methods under ERISA, actuarial assumptions, minimum funding standards, titles I, II, and IV of ERISA, requirements with respect to the valuation of plan assets, requirements for qualification of pension plans, maximum deductible contributions, tax treatment of distributions from qualified pension plans, excise taxes related to the funding of qualified pension plans and standards of performance (including ethical standards) for actuarial services. Core subject matter includes all materials included on the syllabi of any of the pension actuarial examinations offered by the Joint Board during the applicable enrollment cycles. For this purpose, the applicable enrollment cycles are the current enrollment cycle and the enrollment cycle immediately preceding the current enrollment cycle.

(ii) * * * Examples include economics, computer programming, pension accounting, investment and finance, risk theory, communication skills, and business and general tax law.

* * * * *

(iv) The same course of study cannot be used more than once within a given 36-month period to satisfy the continuing education requirements of these regulations. A program or session bearing the same or a similar title to a previous one may be used to satisfy the requirements of these regulations if the major content of the program or session differs substantively from the previous one.

(2) Qualifying Program--(i) In general. A qualifying program is a course of learning that--

(A) Is conducted by a qualified sponsor, within the meaning of paragraph (f)(3) of this section;

(B) Is developed by individual(s) qualified in the subject matter;

(C) Covers current subject matter;

(D) Includes written outlines or textbooks;

(E) Is taught by instructors, discussion leaders, and speakers qualified with respect to the course content;

(F) Includes means for evaluation by the Joint Board of technical content and presentation;

(G) Provides a certificate of completion, within the meaning of paragraph (f)(3)(iv) of this section, to those who have successfully completed the program; and

(H) Provides a certificate of instruction, within the meaning of paragraph (f)(3)(v) of this section, to those who have served as instructors, discussion leaders, or speakers.

(ii) Types of qualifying programs. Qualifying programs may be formal programs, correspondence or individual study programs, and teleconferencing:

(A) Formal programs. Formal programs are programs that meet all of the requirements of paragraph (f)(2)(i) of this section and also require physical attendance by at least three individuals engaged in substantive pension service in addition to the instructor, discussion leader, or speaker.

(B) Correspondence or individual study programs (including audio and/or video taped programs). Correspondence or individual study programs are programs completed on an individual basis by the enrolled actuary. Such programs are qualifying programs if they meet all of the requirements of paragraph (f)(2)(i) of this section and also provide a means for measuring completion by the participants (for example, a written examination).

(C) Teleconferencing. Teleconferencing or other communications technologies (including webcasting) are qualifying programs if they meet all of the requirements under paragraph (f)(2)(i) of this section and either--

(1) Include a sign-on/sign-off capacity or similar technique to verify attendance;
or

(2) Provide a means for measuring completion by the participants (for example, a written examination).

(3) Qualifying sponsors--(i) In general. Qualifying sponsors are organizations recognized by the Executive Director whose programs offer opportunities for continuing professional education in subject matter within the scope of this section. A sole proprietor shall not be treated as a qualifying sponsor for purposes of this section.

(ii) Sponsor agreements. Organizations requesting qualifying sponsor status shall file sponsor agreement requests with the Executive Director and furnish information in support of such requests as deemed necessary for approval by the Executive Director. Such information shall include sufficient information to establish that all programs designated as qualifying programs offered by the qualifying sponsor will satisfy the requirements of paragraph (f)(2) of this section.

(iii) Sponsor enrollment cycle. Qualifying sponsor agreements will remain in effect for no more than one sponsor enrollment cycle. The Executive Director shall publish the names of such sponsors on a periodic basis.

(A) For sponsor agreements effective on or after January 1, 2008, and before January 1, 2012, the applicable sponsor enrollment cycle will end December 31, 2011.

(B) For sponsor agreements effective on or after January 1, 2012, the applicable sponsor enrollment cycle will be three years and will begin on January 1 and end on December 31 at the end of the three year period. Each such three year period is a "sponsor enrollment cycle." The sponsor enrollment cycle is not affected by when during the enrollment cycle the sponsor agreement became effective. For example, for sponsor agreements effective on or after January 1, 2012 and before January 1, 2015, the applicable sponsor enrollment cycle will end December 31, 2014. The subsequent sponsor enrollment cycle will begin January 1, 2015, and end December 31, 2017.

(iv) Certificates of completion. Qualifying sponsors shall furnish to each attendee successfully completing a program presented by such qualifying sponsor a certificate listing the following information:

(A) The name of the attendee.

(B) The name of the sponsoring organization.

(C) The title, location, and speaker(s) of each session attended.

(D) The dates of the program completed.

(E) The total credit hours claimed and the total core and non-core credit hours claimed.

(v) Certificates of instruction. Qualifying sponsors shall furnish to each instructor, discussion leader, or speaker, a certificate listing the following information:

(A) The name of the instructor, discussion leader, or speaker.

(B) The name of the sponsoring organization.

(C) The title and location of the program.

(D) The dates of the program.

(E) The total credit hours claimed and the total core and non-core credit hours claimed for the program.

(g) Alternative means for completion of credit hours--(1) In general. In addition to credit hours completed under paragraph (f) of this section, an enrolled actuary may be awarded continuing education credit under the provisions of this paragraph (g).

(2) Serving as an instructor, discussion leader or speaker. (i) Four credit hours (that is, 200 minutes) of continuing education credit will be awarded for each 50 minutes completed as an instructor, discussion leader, or speaker at a qualifying program which meets the continuing education requirements of paragraph (f) of this section.

(ii) The credit for instruction and preparation may not exceed 50 percent of the continuing education requirement for an enrollment cycle.

(iii) Presentation of the same material as an instructor, discussion leader, or speaker more than one time in any 36 month period will not qualify for continuing

education credit. A program will not be considered to consist of the same material if a substantial portion of the content has been revised to reflect changes in the law or practices relative to the performance of pension actuarial service.

(iv) Credit as an instructor, discussion leader, or speaker will not be awarded to panelists, moderators, or others who are not required to prepare substantive subject matter for their portion of the program. However, such individuals may be awarded credit for attendance, provided the other provisions of this section are met.

(v) The nature of the subject matter will determine if credit will be of a core or non-core nature.

(3) Credit for publications. (i) Continuing education credit will be awarded for the creation of peer-reviewed materials for publication or distribution with respect to matters directly related to the continuing professional education requirements of this section. Credit will be awarded to the author, co-author, or a person listed as a major contributor.

(ii) One hour of credit will be allowed for each hour of preparation time of the material. It will be the responsibility of the person claiming the credit to maintain records to verify preparation time.

(iii) Publication or distribution may utilize any available technology for the dissemination of written, visual or auditory materials.

(iv) The materials must be available on reasonable terms for acquisition and use by all enrolled actuaries.

(v) The credit for the creation of materials may not exceed 25 percent of the continuing education requirement of any enrollment cycle.

(vi) The nature of the subject matter will determine if credit will be of a core or non-core nature.

(vii) Publication of the same material more than one time will not qualify for continuing education credit. A publication will not be considered to consist of the same material if a substantial portion has been revised to reflect changes in the law or practices relative to the performance of pension actuarial service.

(4) Service on Joint Board advisory committee(s). Continuing education credit may be awarded by the Joint Board for service on (any of) its advisory committee(s), to the extent that the Joint Board considers warranted by the service rendered.

(5) Preparation of Joint Board examinations. Continuing education credit may be awarded by the Joint Board for participation in drafting questions for use on Joint Board examinations or in pretesting its examinations, to the extent the Joint Board determines suitable. Such credit may not exceed 50 percent of the continuing professional education requirement for the applicable enrollment cycle.

(6) Examinations sponsored by professional organizations or societies. Individuals may earn continuing professional education credit for achieving a passing grade on proctored examinations sponsored by a professional organization or society recognized by the Joint Board. Such credit is limited to the number of hours scheduled for each examination and may be applied only as non-core credit provided the content

of the examination is core or non-core. No credit may be earned for hours attributable to any content that is neither core nor non-core.

(7) Joint Board pension examination. Individuals may establish eligibility for renewal of enrollment for any enrollment cycle by--

(i) Achieving a passing score on the Joint Board pension examination, as described in §901.12(d)(1)(i), administered under this part during the applicable enrollment cycle; and

(ii) Completing a minimum of 12 hours of qualifying continuing education by attending a formal program during the same applicable enrollment cycle. This option of satisfying the continuing professional education requirements is not available to those who receive initial enrollment during the enrollment cycle.

* * * * *

(i) [Reserved]

(j) Record keeping requirements--(1) Qualified sponsors. A qualified sponsor must maintain records to verify satisfaction of the requirements of this section. Such records must be retained for a period of six years following the end of the sponsor enrollment cycle in which the program is held. In the case of programs of more than one session, records must be maintained to verify completion of the program and attendance by each participant at each session of the program. Copies of any

certificates of completion and certificates of instruction issued to the participants in each program must be retained.

(2) Enrolled actuaries--(i) Qualifying program credits as student. To receive continuing education credit for completion of hours of continuing education credits under paragraph (f) of this section, an enrolled actuary must retain all certificates of completion evidencing completion of such hours for the three-year period following the end of the applicable enrollment cycle.

(ii) Qualifying program credits as teacher or instructor. To receive continuing education credit for completion of hours earned under paragraph (g)(2) of this section, an enrolled actuary must retain all certificates of instruction evidencing completion of such hours for the three year period following the end of the applicable enrollment cycle.

(iii) Credit for publications. To receive continuing education credit for a publication under paragraph (g)(3) of this section, the following information must be maintained by the enrolled actuary for the three year period following the end of the applicable enrollment cycle:

- (A) The name of the publisher.
- (B) The title and author of the publication.
- (C) A copy of the publication.
- (D) The date of the publication.

(E) The total credit hours claimed and the total core and non-core credit hours claimed.

(iv) Other credits. To receive continuing education credit for hours earned under paragraphs (g)(4) through (g)(7) of this section, an enrolled actuary must retain sufficient documentation to establish completion of such hours for the three-year period following the end of the applicable enrollment cycle.

(k) Waivers. (1) Waiver from the continuing education requirements for a given period may be granted by the Executive Director only under extraordinary circumstances, and upon submission of sufficient evidence that every effort was made throughout the renewal cycle to complete such continuing education requirements through any one or more of the various qualifying programs offered by one or more of the qualified sponsors.

(2) A request for waiver must be accompanied by appropriate documentation. The individual will be required to furnish any additional documentation or explanation deemed necessary by the Executive Director.

(3) The individual will be notified by the Executive Director of the disposition of the request for waiver. If the waiver is not approved, and the individual does not otherwise satisfy the continuing education requirements within the allotted time, the individual will be placed on a roster of inactive enrolled individuals.

(4) A request for waiver must be filed no later than the last day of the renewal application period. Those who are granted waivers are required to file timely applications for future renewal of enrollment.

(l) * * * (1) Compliance by an individual with the requirements of this part shall be determined by the Executive Director. * * *

(2) The Executive Director may require any individual, by first class mail sent to his/her mailing address of record with the Joint Board, to provide copies of any records required to be maintained under this section. * * *

(3) * * * A request for review and the reasons in support of the request must be filed with the Joint Board within 30 days of the date of the notice of failure to comply.

(4) Inactive status. (i) An individual who has not filed a timely application for renewal of enrollment, who has not made a timely response to the notice of failure to comply with the renewal requirements, or who has not satisfied the requirements of eligibility for renewal will be placed on a roster of inactive enrolled actuaries for a period up to three enrollment cycles from the date renewal would have been effective.

(ii) An individual in inactive status will be ineligible to perform pension actuarial services as an enrolled actuary under ERISA and the Internal Revenue Code. During such time in inactive status or at any other time an individual is ineligible to perform pension actuarial services as an enrolled actuary, the individual shall not in any manner, directly or indirectly, indicate he or she is so enrolled, or use the term "enrolled actuary,"

the designation "E.A.," or other form of reference to eligibility to perform pension actuarial services as an enrolled actuary.

(iii) An individual placed in inactive status may return to active status by filing an application for renewal of enrollment (with the appropriate fee) and providing evidence of the completion of all required continuing professional education hours for the enrollment cycle and satisfaction of any applicable requirements for qualifying experience under paragraph (l)(7) of this section. If an application for return to active status is approved, the individual will be eligible to perform services as an enrolled actuary and to practice before the Internal Revenue Service effective with the date the notice of approval is mailed to that individual by the Joint Board.

(5) Time for return to active enrollment. (i) An individual placed in inactive status must file an application for return to active enrollment, and satisfy the requirements for return to active enrollment as set forth in this section, within three enrollment cycles of being placed in inactive status. The name of such individual otherwise will be removed from the inactive enrollment roster and his/her enrollment will terminate.

(ii) For purposes of paragraph (l)(5)(i) of this section, an individual placed in inactive status prior to the effective date of these regulations will be deemed to have been placed in inactive status on the effective date of these regulations.

(6) An individual placed in inactive status may satisfy the requirements for return to active enrollment at any time during his/her period of inactive enrollment. If only completion of the continuing education requirement is necessary, the application for

return to active enrollment may be filed immediately upon such completion. If qualifying experience is also required, the application for return to active enrollment may not be filed until the completion of both the continuing education and qualifying experience requirements set forth in this subsection. Continuing education credit under this subsection may not be used to satisfy the requirements of the enrollment cycle in which the individual has been placed back on the active roster.

(7) Continuing education requirements for return to active enrollment from inactive status. (i) During the first inactive enrollment cycle: 36 hours of the qualifying continuing education requirement from the prior enrollment cycle as set forth in paragraph (e)(2) of this section, without regard to paragraph (e)(2)(ii) or (e)(2)(iii) of this section, must be completed. Any hours of continuing education credit from the immediately prior enrollment cycle may be applied in satisfying this requirement.

(ii) During the second inactive enrollment cycle: Four-thirds of the qualifying continuing education requirements as set forth in paragraph (e)(2) of this section (that is, 48 hours), without regard to paragraph (e)(2)(ii) or (e)(2)(iii) of this section, plus eighteen months of the qualifying experience requirements set forth in §901.12(b)(1), must be completed since the start of the first inactive enrollment cycle. Any hours of continuing education credit from the first inactive enrollment cycle may be applied in satisfying this requirement.

(iii) During the third inactive enrollment cycle: Five-thirds of the qualifying continuing education requirements as set forth in paragraph (e)(2) of this section, (that is, 60 hours), without regard to paragraph (e)(2)(ii) or (e)(2)(iii) of this section plus

eighteen months of the qualifying experience requirements set forth in §901.12(b)(1), must be completed since the start of the second inactive enrollment cycle. Any hours of continuing education credit from the second inactive enrollment cycle may be applied in satisfying this requirement. No hours from the first inactive enrollment cycle may be applied in satisfying this requirement.

* * * * *

(9) An individual who has certified in good faith that he/she has satisfied the continuing education requirements of this section will not be considered to be in non-compliance with such requirements on the basis of a program he/she has attended later being found inadequate or not in compliance with the requirements for continuing education. * * *

* * * * *

(n) Verification. The Executive Director or his/her designee may request and review the continuing education records of an enrolled actuary, including programs attended, in a manner deemed appropriate to determine compliance with the requirements and standards for the renewal of enrollment as provided in this section. The Executive Director may also request and review the records of any qualified sponsor in a manner deemed appropriate to determine compliance with the requirements of paragraphs (f)(3) and (j)(1) of this section.

(o) Examples. The following examples illustrate the application of the rules of paragraph (l) (7) of this section:

Example 1. (i) Individual E, who was initially enrolled before January 1, 2008, completes 5 hours of core continuing education credit and 10 hours of non-core continuing education credit between January 1, 2011, and December 31, 2013. Accordingly, effective April 1, 2014, E is placed on a roster of inactive enrolled actuaries and is ineligible to perform pension actuarial services as an enrolled actuary under ERISA and the Internal Revenue Code.

(ii) E completes 7 hours of core continuing education credit and 14 hours of noncore continuing education credit between January 1, 2014, and May 24, 2016. Because E has completed 12 hours of core continuing education and 24 hours of non-core continuing education during the last active enrollment period and the initial period when on inactive status, E has satisfied the requirements for reenrollment during the first inactive cycle. Accordingly, E may file an application for return to active enrollment on May 24, 2016. If this application is approved, E will be eligible to perform pension actuarial services as an enrolled actuary under ERISA and the Internal Revenue Code, effective with the date of such approval.

(iii) Because E used the 21 hours of continuing education credit earned after January 1, 2014, for return from inactive status, E may not apply any of these 21 hours of core and non-core continuing education credits towards the requirements for renewed enrollment effective April 1, 2017. Accordingly, E must complete an additional 36 hours of continuing education (12 core and 24 non-core) prior to December 31, 2016, to be eligible for renewed enrollment effective April 1, 2017.

Example 2. (i) The facts are the same as in Example 1 except E completes 2 hours of core continuing education credit and 8 hours of non-core continuing education credit between January 1, 2014, and December 31, 2016. Thus, because E did not fulfill the requirements for return to active status during his first inactive cycle, E must satisfy the requirements of paragraph (l)(7)(ii) of this section in order to return to active status.

(ii) Accordingly, in order to be eligible to file an application for return to active status on or before December 31, 2019, E must complete an additional 38 hours of continuing education credit (of which at least 14 hours must consist of core subject matter) between January 1, 2017, and December 31, 2019, and have 18 months of responsible pension actuarial experience during the period subsequent to December 31, 2013.

(iii) Note that the 5 hours of core continuing education credit and the 10 hours of non-core continuing education credit that E completes between January 1, 2011, and December 31, 2013, are not counted toward E's return to active status and are also not taken into account toward the additional hours of continuing education credit that E must complete between January 1, 2017, and December 31, 2019, in order to apply for renewal of enrollment effective April 1, 2020.

Example 3. (i) The facts are the same as in Example 1 except E completes 2 hours of core continuing education credit and 8 hours of non-core continuing education credit between January 1, 2014, and December 31, 2016, and 12 hours of core continuing education credit and 24 hours of non-core continuing education credit between January 1, 2017, and December 31, 2019. Thus, because E did not fulfill the requirements for return to active status during his first or second inactive cycles, E must satisfy the requirements of paragraph (l)(7)(iii) of this section in order to return to active status.

(ii) Accordingly, in order to be eligible to file an application for return to active status on or before December 31, 2022, E must complete an additional 24 hours of continuing education credit (of which, at least 8 hours must consist of core subject matter) between January 1, 2020, and December 31, 2022, and have at least 18 months of responsible pension actuarial experience during the period subsequent to December 31, 2016.

(iii) Note that the total of 15 hours of continuing education credit that E completes between January 1, 2011, and December 31, 2013, as well as the 10 hours of continuing education credit between January 1, 2014, and December 31, 2016, are not counted toward E's return to active status and are not taken into account toward the additional hours of continuing education credit that E must complete between January 1, 2020, and December 31, 2022, in order to be eligible to file an application for renewal of enrollment active status effective April 1, 2023.

Example 4. (i) Individual F, who was initially enrolled July 1, 2012, completes 1 hour of core continuing education credit and 2 hours of non-core continuing education credit between January 1, 2012, and December 31, 2013. Accordingly, effective April 1, 2014, F is placed on a roster of inactive enrolled actuaries and is ineligible to perform pension actuarial services as an enrolled actuary under ERISA and the Internal Revenue Code.

(ii) F completes 5 hours of core continuing education credit and 4 hours of non-core continuing education credit between January 1, 2014, and October 6, 2014. Because F has not completed the required 6 hours of core and 6 hours of non-core continuing education during F's initial enrollment cycle, F is not eligible to file an application for a return to active enrollment on October 6, 2014, notwithstanding the fact that had F completed such hours between January 1, 2012, and December 31, 2013, F would have satisfied the requirements for renewed enrollment effective April 1, 2014.

(iii) Accordingly, F must complete an additional 24 hours of continuing education (12 hours of core and 12 hours of non-core) during his/her first inactive enrollment cycle before applying for renewal of enrollment.

Example 5. The facts are the same as in Example 4 except that F completes 17 hours of core continuing education credit and 16 hours of non-core continuing education credit between January 1, 2014, and February 12, 2015. Accordingly, because as of February 12, 2015, F satisfied the continuing education requirements as set forth in

paragraph (e)(2) of this section without regard to paragraph (e)(2)(ii) thereof, F may file an application for return to active enrollment status on February 12, 2015.

(p) With the exception of paragraphs (e)(1) and (f)(3)(iii), this section applies to the enrollment cycle beginning January 1, 2008, and all subsequent enrollment cycles.

§901.12 [Removed]

Par. 6. Section 901.12 is removed.

§901.13 [Redesignated as §901.12]

Par. 7. Section 901.13 is redesignated as §901.12.

Par. 8. Newly redesignated §901.12 is amended by revising the section heading and paragraphs (a), (b), (d), and (e).

The revisions read as follows:

§901.12 Eligibility for Enrollment.

(a) In general. An individual applying to be an enrolled actuary must fulfill the experience requirement of paragraph (b) of this section, the basic actuarial knowledge requirement of paragraph (c) of this section, and the pension actuarial knowledge requirement of paragraph (d) of this section.

(b) Qualifying experience. Within the 10-year period immediately preceding the date of application, the applicant shall have completed either--

(1) A minimum of 36 months of certified responsible pension actuarial experience; or

(2) A minimum of 60 months of certified responsible actuarial experience, including at least 18 months of certified responsible pension actuarial experience.

* * * * *

(d) Pension actuarial knowledge. (1) The applicant shall demonstrate pension actuarial knowledge by one of the following:

(i) Joint Board pension examination. Successful completion, within the 10-year period immediately preceding the date of the application, to a score satisfactory to the Joint Board, of an examination, prescribed by the Joint Board, in actuarial mathematics and methodology relating to pension plans, including the provisions of ERISA relating to the minimum funding requirements and allocation of assets on plan termination.

(ii) Organization pension examinations. Successful completion, within the 10-year period immediately preceding the date of the application, to a score satisfactory to the Joint Board, of one or more proctored examinations which are given by an actuarial organization and which the Joint Board has determined cover substantially the same subject areas, have at least a comparable level of difficulty, and require at least the same competence as the Joint Board pension examination referred to in paragraph (d)(1)(i) of this section.

(2) For purposes of this section, applicants who have successfully completed an examination pursuant to either paragraph (d)(1)(i) or (d)(1)(ii) of this section prior to the effective date of these regulations, will be deemed to have completed such examination on the effective date.

(e) Form; fee. An applicant who wishes to take an examination administered by the Joint Board under paragraph (c)(1) or (d)(1) of this section shall file an application on a form prescribed by the Joint Board. Such application shall be accompanied by payment in the amount set forth on the application form. The amount represents a fee charged to each applicant for examination and is designed to cover the costs for the administration of the examination. The fee shall be retained whether or not the applicant successfully completes the examination or is enrolled.

* * * * *

Par. 9. Section 901.20 is amended as follows:

1. Revising paragraphs (b), (d), (e), and (f).
2. Redesignating paragraphs (g) and (h) as paragraph (k) and (l), respectively, and adding new paragraphs (g) and (h).
3. Reserving paragraph (i).
4. Adding new paragraphs (j) and (m).

The revisions and additions read as follows:

§901.20 Standards of performance of actuarial services.

* * * * *

(b) Professional duty. (1) An enrolled actuary shall perform actuarial services only in a manner that is fully in accordance with all of the duties and requirements for such persons under applicable law and consistent with relevant standards of professional responsibility and ethics for actuarial practice.

(2) An enrolled actuary shall not perform actuarial services for any person or organization which he/she believes, or has reasonable grounds to believe, may utilize his/her services in a fraudulent manner or in a manner inconsistent with law.

(3) An enrolled actuary, upon learning of another enrolled actuary's material violation of this section, shall report the violation to the Executive Director.

* * * * *

(d) Conflicts of interest. In any situation in which an enrolled actuary has knowledge of an actual or potential conflict of interest with respect to the performance of actuarial services, he/she shall not perform such actuarial services unless--

(1) He/she has conducted a good faith evaluation of the circumstances giving rise to the conflict and reasonably concludes that his or her ability to act fairly is unimpaired;

(2) The representation by the enrolled actuary is not prohibited by law; and

(3) Full disclosure of the conflict has been made, in writing, to all present and known prospective principals whose interest would be affected by the conflict, including the plan trustees, any named fiduciary of the plan, the plan administrator thereof and, if the plan is subject to a collective bargaining agreement, the collective bargaining representative, and all such principals have expressly agreed, in writing, to such enrolled actuary performing the actuarial services.

(e) Assumptions, calculations and recommendations. (1) The enrolled actuary shall exercise due care, skill, prudence and diligence when performing actuarial services under ERISA and the Internal Revenue Code. In particular, in the course of preparing a report or certificate stating actuarial costs or liabilities, the enrolled actuary shall ensure that--

(i) The actuarial assumptions are reasonable individually and in combination, and the actuarial cost method and the actuarial method of valuation of assets are appropriate;

(ii) The calculations are accurately carried out and properly documented; and

(iii) The report, any recommendations, and any supplemental advice or explanation relative to the report reflect the results of the calculations.

(2) An enrolled actuary shall include in any report or certificate stating actuarial costs or liabilities, a statement or reference describing or clearly identifying the data, any material inadequacies therein and the implications thereof, and the actuarial methods and assumptions employed.

(f) Due diligence. (1) An enrolled actuary must exercise due diligence--

(i) In preparing or assisting in the preparation of, approving, and filing tax returns, documents, affidavits, and other papers relating to the Department of the Treasury, the Department of Labor, the Pension Benefit Guaranty Corporation, or any other applicable Federal or State entity;

(ii) In determining the correctness of oral or written representations made by the enrolled actuary to the Department of the Treasury, the Department of Labor, the Pension Benefit Guaranty Corporation, or any other applicable Federal or State entity; and

(iii) In determining the correctness of oral or written representations made by the enrolled actuary to clients.

(2) An enrolled actuary advising a client to take a position on any document to be filed with the Department of the Treasury, the Department of Labor, the Pension Benefit Guaranty Corporation, or any other applicable Federal or State entity (or preparing or signing such a return or document) generally may rely in good faith without verification upon information furnished by the client. The enrolled actuary may not, however, ignore the implications of information furnished to, or actually known by, the enrolled actuary, and must make reasonable inquiries if the information as furnished appears to be incorrect, inconsistent with an important fact or another factual assumption, or incomplete.

(g) Solicitations regarding actuarial services. An enrolled actuary may not in any way use or participate in the use of any form of public communication or private solicitation related to the performance of actuarial services containing a false,

fraudulent, or coercive statement or claim, or a misleading or deceptive statement or claim. An enrolled actuary may not make, directly or indirectly, an uninvited written or oral solicitation of employment related to actuarial services if the solicitation violates Federal or State law, nor may such person employ, accept employment in partnership form, corporate form, or any other form, or share fees with, any individual or entity who so solicits. Any lawful solicitation related to the performance of actuarial services made by or on behalf of an enrolled actuary must clearly identify the solicitation as such and, if applicable, identify the source of the information used in choosing the recipient.

(h) Prompt disposition of pending matters. An enrolled actuary may not unreasonably delay the prompt disposition of any matter before the Internal Revenue Service, the Department of Labor, the Pension Benefit Guaranty Corporation, or any other applicable Federal or State entity.

(i) [Reserved.]

(j) Return of client's records. (1) In general, an enrolled actuary must, at the request of a client, promptly return any and all records of the client that are necessary for the client to comply with his or her legal obligations. The enrolled actuary may retain copies of the records returned to a client. The existence of a dispute over fees generally does not relieve the enrolled actuary of his or her responsibility under this section. Nevertheless, if applicable state law allows or permits the retention of a client's records by an enrolled actuary in the case of a dispute over fees for services rendered, the enrolled actuary need only return those records that must be attached to the client's legally required forms. The enrolled actuary, however, must provide the client with reasonable access to review and copy any additional records of the client retained by

the enrolled actuary under state law that are necessary for the client to comply with his or her legal obligations.

(2) For purposes of this section, records of the client include all documents or written or electronic materials provided to the enrolled actuary, or obtained by the enrolled actuary in the course of the enrolled actuary's representation of the client, that preexisted the retention of the enrolled actuary by the client. The term "records of the client" also includes materials that were prepared by the client or a third party (not including an employee or agent of the enrolled actuary) at any time and provided to the enrolled actuary with respect to the subject matter of the representation. The term "records of the client" also includes any return, claim for refund, schedule, affidavit, appraisal or any other document prepared by the enrolled actuary, or his or her employee or agent, that was presented to the client with respect to a prior representation if such document is necessary for the taxpayer to comply with his or her current legal obligations. The term "records of the client" does not include any return, claim for refund, schedule, affidavit, appraisal or any other document prepared by the enrolled actuary or the enrolled actuary's firm, employees or agents if the enrolled actuary is withholding such document pending the client's performance of its contractual obligation to pay fees with respect to such document.

* * * * *

(m) The rules of this section apply to all actuarial services and related acts performed on or after the date these regulations are published as final regulations in the **Federal Register**.

Par. 10. Section 901.31 is amended by revising paragraphs (a) and (c) introductory text to read as follows:

§901.31 Grounds for suspension or termination of enrollment.

(a) Failure to satisfy requirements for enrollment. The enrollment of an actuary may be terminated if it is found that the actuary did not satisfy the eligibility requirements set forth in §901.11 or §901.12.

* * * * *

(c) Disreputable conduct. The enrollment of an actuary may be suspended or terminated if it is found that the actuary has, at any time after he/she applied for enrollment, engaged in any conduct set forth in §901.12(f) or other conduct evidencing fraud, dishonesty, or breach of trust. Such other conduct includes, but is not limited to, the following:

* * * * *

Par. 11. Section 901.32 is amended by revising the last sentence to read as follows:

§901.32 Receipt of information concerning enrolled actuaries.

* * * If any other person has information of any such violation, he/she may make a report thereof to the Executive Director.

Par. 12. Section 901.47 is amended by revising the last sentence to read as follows:

§901.47 Transcript.

* * * Copies of exhibits introduced at the hearing or at the taking of depositions will be supplied to parties upon the payment of a reasonable fee (31 U.S.C. 9701).

Par. 13. Section 901.72 is added to read as follows:

§901.72 Additional Rules. The Joint Board may, in notice or other guidance of general applicability, provide additional rules regarding the enrollment of actuaries.

Zenaida Samaniego
Chairman, Joint Board for the Enrollment of Actuaries.