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AMERICAN ACADEMY of ACTUARIES

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November 20, 2009

Room 5203  
Internal Revenue Service  
PO Box 7604  
Ben Franklin Station  
Washington, DC 20044

RE: CC:PA:LPD:PR (REG-159704-03)

To Whom It May Concern:

I am writing to you on behalf of the Pension Committee of the American Academy of Actuaries<sup>1</sup> in response to proposed regulations governing the performance of actuarial services under the Employee Retirement Income Security Act of 1974 (ERISA). The Pension Committee appreciates the opportunity to comment and respectfully requests that the Joint Board clarify the following issues in the final regulations.

### **Continuing Professional Education (CPE) Requirements**

1. The definition of core and non-core subject matter for continuing education should be expanded and clarified. The regulations should specify that core subject matter include all Internal Revenue Code sections on which enrolled actuaries may practice in front of the IRS as noted in Circular 230. Non-core subject matter should be expanded to specifically include (1) work dealing with accounting for retirement benefits other than pensions; and (2) consulting skills.
2. Please clarify whether another means for measuring completion of a video/audio tape program under Section 901.11(f)(2)(ii)(B) could be attendance at the replay of the session by at least three individuals engaged in substantive pension service who can certify to each other's attendance.
3. If Organization A pays the fee for its employees to attend a CPE webcast session sponsored by Organization B (i.e., the "qualified sponsor" for this particular webcast) in order to have as many participants in the room as possible, is it acceptable for Organization A to issue its own certificates of completion for credit for that webcast? If so, what is required for Organization A to issue the certificates (e.g., must Organization A have qualified sponsor status with the Joint Board)?
4. Must certificates of completion and certificates of instruction be furnished to attendees and instructors in paper form or may they be posted to an electronic database that individuals can access and subsequently print out when needed?
5. Section 901.11(f)(1) specifies that no less than one-third of the total hours of CPE credit for a 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" [emphasis added]. Paragraph (f)(2)(ii)(A) adds that a formal program requires "*physical attendance* by at least three individuals...*in addition to the instructor.*" Webcasts have become an important source of education and are

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<sup>1</sup> The American Academy of Actuaries is a 17,000-member professional association whose mission is to serve the public on behalf of the U.S. actuarial profession. The Academy assists public policymakers on all levels by providing leadership, objective expertise, and actuarial advice on risk and financial security issues. The Academy also sets qualification, practice, and professionalism standards for actuaries in the United States.

more economical, particularly for actuaries employed by small firms, but also for firms (acting as a qualified sponsor) conducting training across multiple office locations. Accordingly, we suggest that teleconferences, including webcasts, under (f)(2)(ii)(C) be included along with formal programs in meeting the 901.11(f)(1) requirement, provided that they permit attendees to submit questions, either by telephone or online.

6. Please include clarifying examples of approaches in a teleconference that satisfy the requirement for a “sign-on/sign-off technique” under 901.11(f)(2)(ii)(C)(1). It would be most helpful to have an example of a technique that is acceptable when an actuary individually signs into a teleconference and another example of a technique that is acceptable when a group of actuaries together sign into a teleconference. Group sign-on has become more prevalent due to the group pricing of teleconferences by many actuarial organizations which often charge one price for each center and give credit based on a list of attendees received from the group leader at each center. Typically, attendees sign in on an attendance sheet.
7. The Pension Committee commends the Joint Board for including two hours of ethical standards material as part of the core subject matter requirement. Please provide clarifying examples of what types of material that will be considered ethical standards material under 901.11(e)(2)(vi). In particular, please clarify whether Actuarial Standards of Practice (ASOPs) relating to work not specifically covered by exams is considered core subject material relating to ethical standards. For example, we believe that ASOP Nos. 4, 23, 27, 35 and 41 should be considered core subject material relating to ethical standards.
8. Time spent learning and teaching others about pension standards of practice is already eligible for core continuing education credit. Given the intense technical and professional dialogue and research that is required to create those standards, we recommend that the time spent on Actuarial Standards Board (ASB) committees dealing directly with the creation of those standards also be eligible for core continuing education credit.

## **Standards of Performance of Actuarial Services**

1. Section 901.20(b)(1) states “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*” [emphasis added]. We applaud the Joint Board for including the duty to follow relevant actuarial standards of practice. However, we request clarification with respect to what the Joint Board considers to be “relevant standards.” The Academy’s Code of Conduct and the Actuarial Standards of Practice apply to the members of all five of the major U.S. actuarial organizations and, therefore, to the vast majority of enrolled actuaries. Accordingly, the Pension Committee recommends that the Joint Board refer directly to the Code of Conduct and Actuarial Standards of Practice in the regulations. If such direct incorporation is problematic, the preamble of the final regulations could refer to the Code of Conduct and Actuarial Standards of Practice as adopted by the U.S. actuarial profession as relevant to appropriate actuarial principles and practice for all enrolled actuaries. Under that approach, we recommend that the last part of (b)(1) be changed to “...and consistent with appropriate actuarial principles and practices, to the extent not inconsistent with Part 901.”
2. Current regulations require full disclosure by the actuary, before performing applicable actuarial services, of any known conflicts of interest to plan trustees, any named fiduciary of the plan, the plan administrator, and, if the plan is subject to a collective bargaining agreement, the collective bargaining representative before the actuary can perform the applicable actuarial services. The proposed regulations also would require written disclosure of potential or known conflicts to any of these parties and for them to agree, in writing, to the actuary performing such actuarial

services. We believe the only parties that should possibly be required to provide written agreement are the plan administrator or other appropriate named fiduciary of the plan. It is far from clear what might constitute a potential conflict related to services provided as an enrolled actuary. Further, the actuary does not generally have a relationship with these other parties necessary to discuss the need for written agreement. For example, unless the plan is administered by joint labor/management trustees, contact with any collective bargaining representatives is handled solely by the plan sponsor, not by the actuary.

3. Please confirm that there is a client confidentiality exemption to the professional duty requirement under 901.20(b)(3) that an enrolled actuary, upon learning of another enrolled actuary's material violation of this section, is required to report the violation to the Executive Director.
4. In any report or certificate stating actuarial costs or liabilities (§901.20(e)(2)), the Pension Committee recommends that plan provisions also be identified along with data, methods and assumptions.

### **Types of Enrollment Statuses (Active, Inactive, and Retired)**

1. We request clarification regarding record-keeping requirements. For example, must certificates of completion, certificates of instruction, and the other CPE credit documentation from the 2005-2007 enrollment cycle be kept until the end of 2010 or until the end of 2013? When does the three-year requirement to retain certificates expire? That is, is the "applicable enrollment cycle" under 901.11(j)(2) the three-year enrollment cycle during which the CPE credits are earned or the following three-year enrollment for which those credits apply to renew the actuary's enrollment?

We would be happy to discuss any of these items with you at your convenience. Please contact Jessica M. Thomas, the Academy's pension policy analyst (202-785-7868; [thomas@actuary.org](mailto:thomas@actuary.org)) if you have any questions or would like to discuss these items further. If there is a public hearing regarding these proposed regulations, we request the opportunity to testify.

Sincerely,



John H. Moore, MAAA, EA, FSA, FCA  
Chairperson, Pension Committee  
American Academy of Actuaries