

Joint Board Regulations – FAQ

I. QUESTIONS RELATED TO QUALIFYING PROGRAMS FOR CONTINUING PROFESSIONAL EDUCATION (CPE) CREDIT

The Joint Board regulations outline a number of requirements for qualifying programs in general, and for formal programs in particular (see section 901.11(f)(2) of the Joint Board regulations).

Q I-1. What types of topics would qualify for ethics credits?

A I-1. In accordance with section 2 of the preamble to the Joint Board regulations, courses covering actuarial codes of conduct, actuarial responsibilities and actions discussed in section 901.20 of the regulations (standards of performance) qualify for ethics credit.

Not all topics that qualify for “professionalism” credits under the qualification standards for certain professional actuarial organizations qualify for ethics credits. A session covering Actuarial Standards of Practice (“ASOPs”) would not generally qualify for ethics credits, because many of the ASOPs deal with the technical aspects or the general process of the work and not the ethical considerations that arise in applying them.

Examples of sessions that could count toward the ethics CPE requirement include sessions regarding ethical dilemmas (like conflicts of interest or biased advice), general business ethics (like dealing with errors and omissions), and standards of performance under Circular 230 (but not discussions of qualification requirements, including PTIN requirements). Examples of sessions that would not count toward the ethics CPE requirement include sessions on the general process for selecting assumptions or calculating plan liabilities or contributions under the ASOPs.

Q I-2. May an enrolled actuary receive credit for participating in a session if no others are present?

A I-2. The general rules for a qualifying program apply not only to the typical continuing professional education sessions but also to self-study sessions. As long as the qualifying sponsor is satisfied that they can verify attendance/completion of the program, the sponsor can issue a certificate of completion for either type of session. However, to receive credit as a formal program, simultaneous attendance (either virtually or in the same physical location) by at least 3 persons engaged in substantive pension service who have access to an instructor qualified to answer questions is required.

Q I-3. Can CPE credits be granted for listening to a taped program?

A I-3. If the program meets the requirements for a qualifying program, credit can be granted to an individual who listens to the taped program as long as a qualifying sponsor is able to verify attendance/completion of the program.

Furthermore, if a group of at least 3 persons engaged in substantive pension service listens to the tape together (either virtually or in the same physical location) along with a qualified individual who serves as the instructor (who need not be in the same location), the session may qualify for credit as a formal program.

II. QUESTIONS RELATED TO CERTIFICATES OF COMPLETION OF A QUALIFYING PROGRAM

Q II-1. If individuals are listening to a live audiocast or webcast from a given location or multiple locations, can the person or group in charge of coordinating the session at that location or locations issue certificates or is the sponsor of the audiocast or webcast required to issue the certificates?

A II-1. Only a qualifying sponsor recognized by the Joint Board can issue a certificate of completion under the Joint Board regulations. Such regulations require that the organization issuing the certificates take responsibility for verifying attendance, judging whether the program meets the requirements for credit, including whether the program is a formal program with respect to each individual, whether the program qualifies for core/non-core or ethics credits, etc.

If the person or group in charge of coordinating the program for a given location or locations is a qualifying sponsor and if that person or group is willing to take responsibility for the recordkeeping, content, verification of attendance, etc., as the program sponsor for that session at the location(s), then the certificates can be issued locally as opposed to being issued by the sponsor of the webcast or audiocast itself.

However, if the local group is not a qualifying sponsor, any certificates must be issued by the qualifying sponsor in charge of the audiocast or webcast. In issuing such certificates, the qualifying sponsor may rely on a signed written statement verifying attendance along with the list of attendees at that location or locations provided after the session by the person or group in charge of coordinating the session at those location(s). In order to rely on the written statement, the qualifying sponsor must ensure that the local group is aware of the Board's attendance verification requirements. One way the qualifying sponsor can inform the local group of the attendance verification requirements is to provide the person or group coordinating the session for the local group a copy of relevant guidance (for example, this FAQ II-1 and the following FAQ II-2). The qualifying sponsor may not rely on the written statement if the qualifying sponsor knows or has reason to know that the local group did not verify attendance or if the person in charge of coordinating the session for the group did not sign the statement.

An example of a written statement provided after the session to the qualifying sponsor by the person in charge of coordinating the session for a group is, "I (name of registered person) understand and complied with the Joint Board's requirements to verify attendance at the session entitled (name of session) sponsored by (name of qualifying sponsor). I confirm that in accordance with those requirements, the following individuals attended the above-referenced session on (DATE): [list of names]."

In addition to the traditional mailed "wet" signature, qualifying sponsors may accept scanned or photographed signatures sent electronically and digital signatures that use encryption techniques. If an individual in charge of confirming the list of attendees is unable to submit a signature this way, he or she may use email or text messaging, with or without attachments, to transmit the signed written statement and attendee listing so long as the following is established:

1. The qualifying sponsor gives the signer the option of signing on paper and sending via postal mail;
2. The respective parties either express or imply their consent to do business electronically; and
3. The signer's authenticity is verified independently through the presence of a valid email trail, mobile phone number, IP address, or two-step verification.

The qualifying sponsor must maintain the written statement, the list of attendees, records of the transaction, and the electronic signatures with its records for the session for a period of six years following the end of the sponsor enrollment cycle in which the program was held.

Note that if at least three persons engaged in “substantive pension service” simultaneously attended the session (either virtually or in the same physical location), have access to the instructor for the session for questions, and the session otherwise meets the requirements for a formal program, the program qualifies as a formal program for the instructor and participants that each meet those requirements.

Q II-2. How can the qualifying sponsor of a webcast or other distance-learning session verify attendance at remote locations? In particular, how can the sponsor verify that at least three persons engaged in substantive pension service attended the program simultaneously (either virtually or in the same physical location) and had access to the instructor for questions, so that the sponsor can issue a certificate showing formal credit?

A II-2. Qualifying sponsors are responsible for verifying attendance and must take reasonable steps to satisfy themselves that an individual completed the program and (if applicable) qualifies for formal credit. For example, the qualifying sponsor could verify attendance by checking telephone or computer logs to verify that an individual was connected to the session for the entire time, could periodically require a response from attendees to ensure that they are listening to the session, or implement some other reasonable method for verifying attendance. For example, a qualifying sponsor may use sign-up sheets at the remote locations and identify a responsible person who is accountable for confirming the names of those who were in attendance for the entire session. The qualifying sponsor should maintain a copy of the documentation of attendance for its records.

Note that it is possible that the qualifying sponsor may inadvertently issue an invalid certificate of completion to someone who did not actually attend the entire session even though reasonable methods are applied to verify attendance. For example, if a person calls in to an audiocast but is called away from the phone (while it is still connected), a phone log would show that the individual attended the entire session when in fact he/she did not. In that case, it is the individual's responsibility to comply with the standards of performance and only claim credits that he/she actually earned when applying for renewal of enrollment.

Q II-3. Would it be considered reasonable for a qualifying sponsor to allow individuals to go directly to the sponsor's website and request a certificate for a given program?

A II-3. Not unless the qualifying sponsor has some way of verifying that the individual actually attended the session. The Joint Board has serious concerns about someone being able to click on a website and request a certificate and encourages qualifying sponsors to implement appropriate checks and controls that are needed to verify that the individual actually attended the entire session. Qualifying sponsors that do not implement such checks and controls are in danger of losing their status as qualifying sponsors.

III. QUESTIONS RELATED TO CONTINUING PROFESSIONAL EDUCATION (CPE) CREDITS

Q III-1. Under section 901.11 of the Joint Board regulations, CPE credits cannot be granted for a session unless it is at least 50 minutes long. Is it permitted to split the credit for a given session between different types of credits -- for example, between core/non-core, or between ethics credits and other types of credits?

A III-1. Yes. A sponsor may allocate a qualifying session among different credit classifications based on the actual instruction time devoted to each classification. For example, if a 50-minute

session consists of 25 minutes of discussion on topics that would qualify for ethics credit under the Joint Board regulations and 25 minutes covering non-core topics, attendees can receive ½ hour of ethics credit and ½ hour of noncore credit. The Joint Board has not set a minimum number of minutes for credit for a topic within a session but notes that a topic cannot be meaningfully covered in a very short time period. For example, merely mentioning an ethical standard or professional obligation incidentally does not support an allocation of ethics credit. Accordingly, the Joint Board will expect qualifying sponsors to be reasonable when splitting a session into different types of CPE credits and will review any such allocation upon audit based on facts and circumstances.

Q III-2. Section 901.11(g)(2)(ii) of the regulations limits the number of credits an individual can claim as an instructor to 50% of the required credits. If an individual has already reached this limit, can he/she claim any CPE credits for additional sessions for which he/she is an instructor?

A III-2. Yes. The instructor may claim the credit for actual time spent attending a qualifying program as long as he/she meets the requirements that would apply to anyone attending the session (including restrictions on credits for sessions repeating the same material for which the individual has already claimed credit). The same minutes may not be counted both as instruction time and participant time.

Q III-3. Section 901.11(g)(2)(iv) of the regulations states that credit as an instructor will not be awarded to those who are not required to prepare “substantive subject matter” for their portion of the program. Does that mean the instructor must personally prepare an outline or other written course material in order to qualify for the additional credits?

A III-3. No. The Joint Board recognizes that a substantial amount of time may be required to adequately prepare for a session even if the individual is not directly responsible for preparing the written outline or other course materials used for the session. However, CPE credits are intended to be granted when an individual's knowledge is enhanced -- so if an individual is presenting a topic with which he/she is already so familiar that he/she does not need to do any preparation, or if the individual's role in the session does not involve being prepared to present substantive subject matter (such as a moderator who is not responsible for presenting subject matter), no additional CPE credits should be awarded.

IV. QUESTIONS RELATED TO INITIAL ENROLLMENT

[Reserved]

V. QUESTIONS RELATED TO STANDARDS OF PERFORMANCE

Q V-1. The Joint Board regulations state that an enrolled actuary may perform actuarial services for a client even if there is a conflict of interest, as long as "each affected client waives the conflict of interest and gives informed consent at the time the existence of the conflict of interest is known by the enrolled actuary" (see section 901.20(d)(2)(iii)). Is it permissible for an enrolled actuary to include a provision in the initial engagement letter that allows the client to prospectively waive any potential conflicts of interest?

A V-1. No. The regulations require that the affected client give informed consent. A client cannot give this consent unless they understand the situation giving rise to the conflict. If a specific conflict already exists and is known when the engagement begins, the affected client(s) may give informed consent at that time, provided all other conditions of 901.20(d)(2) are satisfied. A blanket waiver that addresses conflicts that have not yet arisen cannot be informed consent.

Q V-2. In some circumstances, the mere disclosure of the conflict of interest can violate confidentiality agreements. How does the actuary obtain informed consent in these situations?

A V-2. If the actuary cannot avoid a situation in which disclosing the conflict to one client violates the confidentiality of another client, the actuary cannot obtain informed consent. If this is the case, the actuary will have to decline to perform actuarial services for at least one of the affected clients involved, without disclosing the particular situation involved.

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