

## JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

### 20 CFR Part 901

[TD 9517]

RIN 1545-BC82

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

**AGENCY:** Joint Board for the Enrollment of Actuaries.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations under section 3042 of the Employee Retirement Income Security Act of 1974 (ERISA) relating to the enrollment of actuaries. These regulations update the eligibility requirements for performing actuarial services for ERISA-covered employee pension benefit plans, including the continuing professional education requirements, and the standards for performing such actuarial services. These regulations will affect employee pension benefit plans and the actuaries providing actuarial services to those plans.

**DATES:** *Effective date:* These regulations are effective on May 2, 2011.

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

#### SUPPLEMENTARY INFORMATION:

#### Paperwork Reduction Act

The collections of information contained in these final regulations have been 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.

The collections of information in the regulations are in sections 901.1(i), 901.1(j), 901.10, 901.11(d), 901.11(f)(2)(D), 901.11(f)(2)(G) and (H), 901.11(f)(3)(ii), 901.11(g)(3), 901.11(j)(1), 901.11(j)(2), 901.11(k), 901.11(l)(4)(v), 901.12(e), and 901.54. These collections of information are required in order for the Joint Board to carry out its function under section 3042 of ERISA, which provides that the 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, and 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.

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.

#### Background

This document contains final regulations 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 professional 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. The Joint Board last issued comprehensive amendments to the regulations regarding section 3042 in 1988 (53 FR 34484). 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). On December 21, 2007, the Joint Board issued final regulations relating to user fees for the initial enrollment and reenrollment as an enrolled actuary in the **Federal Register** (72 FR 72606). On September 21, 2009, the Joint Board issued proposed regulations under section 3042 (74 FR 48030). Written public comments were received on the proposed regulations, and a public hearing was held on February 25, 2010.

## Explanation of Provisions

### I. Overview

These regulations finalize the rules proposed in REG-159704-03 (published September 21, 2009), with certain modifications highlighted in this preamble.

### II. Eligibility for Initial Enrollment

These regulations provide that an individual applying to be an enrolled actuary must fulfill (1) an experience requirement, (2) a basic actuarial knowledge requirement, and (3) a pension actuarial knowledge requirement. All applicants for enrollment must agree to comply with these regulations and with any other guidance as required by the Joint Board.

These regulations provide two alternative ways of satisfying the experience requirement. Within the 10-year period immediately preceding the date of the application, the applicant must have completed either (1) at least 36 months of certified responsible pension actuarial experience, or (2) at least 18 months of certified responsible pension actuarial experience if the applicant has a total of 60 months of certified responsible actuarial experience.

These regulations retain the definitions of responsible actuarial experience and responsible pension actuarial experience. Responsible actuarial experience means actuarial experience (1) involving participation in making determinations that the methods and assumptions adopted in the procedures followed in actuarial services are appropriate in the light of all pertinent circumstances, and (2) demonstrating a thorough understanding of the principles and alternatives involved in such actuarial services. Responsible pension actuarial experience means responsible actuarial experience involving valuations of the liabilities of pension plans, wherein the performance of such valuations requires the application of principles of life contingencies and compound interest in the determination, under one or more standard actuarial cost methods, of such of the following as may be appropriate in the particular case: (1) Normal cost; (2) accrued liability; (3) payment required to amortize a liability or other amount over a period of time; and (4) actuarial gain or loss.

These regulations define *certified responsible actuarial experience* to mean responsible actuarial experience of an individual that has been certified in writing by the individual's supervisor. These regulations define *certified responsible pension actuarial*

*experience* to mean responsible pension actuarial experience of an individual that has been 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, these regulations provide that 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.

One commenter requested greater flexibility in satisfying the experience requirements for enrollment based on experience in more specialized pension areas of practice. These regulations retain the requirement that enrolled actuaries have certified responsible pension actuarial experience as previously defined because the Joint Board believes that a broad base of pension knowledge is necessary to recognize issues that may arise even in a specialized area of practice. Nonetheless, the Joint Board recognizes that the broad base of experience needed to become an enrolled actuary does not qualify an enrolled actuary to do every type of work for which an enrolled actuary is required.

In response to the proposed regulation, one commenter suggested that, given the pace of change and for consistency with the experience requirement for return from inactive status, all of an applicant's responsible pension experience should be completed within 5 years preceding enrollment (rather than 10 years). The commenter pointed out that for reenrollment under the proposed regulations, an inactive enrolled actuary would need more recent experience. These regulations retain the rule in the current regulations that requires the experience for initial enrollment to have been completed within the previous 10 years, and, as explained in more detail in section IV of this preamble (Inactive Enrolled Actuaries), they retain the requirements in the proposed regulations for an enrolled actuary who wishes to return to active status from inactive status that depends on how long the actuary has been on the inactive roster. The difference in the timing of the required experience for initial enrollment and for returning from inactive status reflects the different purposes served by the two requirements. The Joint Board requires enrolled actuaries who let their enrollment lapse into inactive status to demonstrate their return to active practice with more recent experience. It can be expected that, in general, such actuaries are farther along in their

careers and are more likely to quickly build up, or return to, an active independent practice. For such actuaries, the Joint Board believes that recent pension experience is paramount. In contrast, it can be expected that newly enrolled actuaries will take longer to develop active independent practices. For these actuaries, the Joint Board believes that a longer look-back period is reasonable.

In response to the proposed regulations, one commenter suggested that, in order to make sure that an actuary does not lose the opportunity to get credit for responsible actuarial and responsible pension actuarial experience, enrolled actuaries should be required to certify the experience of potential candidates annually and when the potential candidate changes supervisor or employer. The Joint Board feels it is not necessary to add this additional paperwork requirement for enrolled actuaries who supervise and train actuaries who are not yet enrolled. The Joint Board will address on a case-by-case basis situations involving the inability of the Executive Director to obtain certification of an applicant's experience.

These regulations do not amend the definition of basic actuarial knowledge required for initial enrollment. Basic actuarial knowledge may be obtained in one of three ways—successful completion of a Joint Board basic examination; successful completion 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 comparable levels of difficulty, and require at least the same competence as the Joint Board basic examination; or receipt of a bachelor's or higher degree in either actuarial mathematics or another area which include at least as many semester hours or quarter hours as required by the Joint Board in mathematics, statistics, actuarial mathematics, and other areas determined by the Joint Board.

These regulations provide that an applicant may demonstrate pension actuarial knowledge through successful completion, within the 10-year period immediately preceding the date of the application for enrollment, of either the Joint Board pension examination (currently administered as the EA-2A and EA-2B), or an approved pension examination, or examinations, given by an actuarial organization which the Joint Board has determined cover substantially the same subject areas, have at least comparable levels of difficulty, and require at least the same

competence as the Joint Board pension examination. For this purpose, these regulations provide that the date of successful completion of an examination is generally the date a candidate sits for the examination, provided that the candidate receives a passing grade on that examination. However, an applicant who sat for a given examination prior to the effective date of these regulations will be deemed to have sat for such examination on the effective date.

### III. Eligibility for Re-Enrollment

#### A. Requirement To File an Application for Renewal

These regulations do not change the requirement that an enrolled actuary seeking to renew his or her enrollment must file an application for renewal of enrollment between October 1, 2010 and March 1, 2011, and between October 1 and March 1 of every third year thereafter. An enrolled actuary seeking renewal must complete the required continuing professional education hours prior to submitting an application for renewal, but in no event later than the December 31 immediately preceding the March 1 due date for the application for renewal. These regulations continue to provide that the effective date for renewal of enrollment for individuals who are currently enrolled (and in active status) and who file complete renewal applications by the March 1 due date shall be the April 1 immediately following the March 1 due date. The effective date of renewal of enrollment for an individual who files a complete renewal application after the March 1 due date is the later of the April 1 immediately following the due date of application and the date of the notice of renewal.

#### B. Continuing Professional Education Requirement

##### 1. Number of Hours Required

These regulations retain the general requirement that an enrolled actuary earn 36 hours of continuing professional education during each full enrollment cycle. These regulations define the *enrollment cycle* to mean the three-year period from January 1, 2011, to December 31, 2013, and every three-year period thereafter.

Several commenters suggested that the time period for earning continuing professional education credit should extend beyond the end of the enrollment cycle. The Joint Board decided that it is reasonable to expect enrolled actuaries to make time for satisfying their continuing professional education requirement during the

enrollment cycle and that extending the end of each enrollment cycle so that it overlaps with the beginning of the next enrollment cycle would create an unnecessary complication. However, an enrolled actuary who does not complete the required hours by December 31 of the enrollment cycle may submit an application to return to active status after completing the required hours. Such an individual's reenrollment will be effective on the later of (1) the April 1 immediately following the end of the enrollment cycle or (2) the date that the Joint Board grants the application. These regulations include examples that illustrate when an enrolled actuary's reenrollment will be effective.

These regulations make no change to the rule that newly enrolled actuaries who are initially enrolled during the first year of an enrollment cycle must complete 24 hours of continuing professional education hours in the enrollment cycle during which they are enrolled. Newly enrolled actuaries who are initially enrolled during the second year of an enrollment cycle must complete 12 hours of continuing professional education hours in the enrollment cycle during which they are enrolled. Newly enrolled actuaries who are initially enrolled during the last year of an enrollment cycle are exempt from the continuing education requirements until the next enrollment cycle, but must file a timely application for renewal.

These regulations require at least 18 hours of continuing professional education in core subject matter during the enrollment cycle that ends December 31, 2010, for all enrolled actuaries enrolled during the entire cycle. Thereafter, for actuaries who have already been enrolled for at least one full enrollment cycle before the start of a new enrollment cycle, these regulations provide that only 12 of the 36 hours of required continuing professional education during the new enrollment cycle must consist of core subject matter.

These regulations provide that the required continuing professional education hours must be earned after January 1 of the year the enrolled actuary becomes enrolled. Half of the required hours for newly enrolled actuaries must be comprised of core subject matter.

The Joint Board received comments both in favor of and against the proposed two-tiered requirement that 18 hours of continuing professional education be core subject matter for enrolled actuaries during their first full enrollment cycle but only 12 hours be core subject matter for each subsequent

enrollment cycle. In light of the complexity and rapid changes in core subject matter, the Joint Board feels that some ongoing education in core subject matter is always necessary. On the other hand, the Joint Board wishes to encourage enrolled actuaries at every level of experience to satisfy a portion of their continuing professional education requirement through participation in non-core programs that are designed to enhance their knowledge in matters related to the performance of pension actuarial services. The Joint Board feels that the two-tiered approach is the best way to achieve that result. Accordingly, these regulations adopt the two-tiered requirement as proposed.

For each full enrollment cycle beginning after December 31, 2010, these regulations require at least 2 of the required core hours of continuing professional education to relate to ethical standards. Some commenters suggested either not treating continuing professional education on ethical standards as core subject matter or increasing the number of hours required to consist of core subject matter by 2 hours to account for the ethics requirement. The Joint Board feels that fidelity to the high ethical standards of practice is as essential for enrolled actuaries as is knowledge of the technical rules studied in other core areas. Ethics have always been considered to be core subject matter, and an enrolled actuary who wishes to increase the number of hours spent studying the core technical rules may always undertake more than the minimum number of core hours. Accordingly, the Joint Board feels that including ethical standards as part of the required hours of core subject matter is appropriate.

In response to comments, these regulations clarify that when core subject matter hours are required (including when an individual seeks to return to active status from inactive status), an individual must complete a minimum of two hours of continuing professional education credit relating to ethical standards, regardless of the total number of core hours required.

The regulations require an enrolled actuary to retain certain records evidencing completion of continuing professional education for three years after the end of the enrollment cycle for which the enrolled actuary claims the credit. To receive credit based on participation in a qualifying program, the regulations require the enrolled actuary to retain the certificate of completion or certificate of instruction, as applicable. To receive credit for

publications, these regulations require the enrolled actuary to retain the name of the publisher, the title and author of the publication, a copy of the publication, the date of publication, the total credit hours earned, and the total core and non-core credit hours earned. To receive credit for service on a Joint Board advisory committee, for preparation of Joint Board examinations, for passing examinations sponsored by professional organizations or societies, or for passing the Joint Board pension examination, these regulations require the enrolled actuary to retain sufficient documentation to establish completion of such hours.

## 2. Subject Matter of Continuing Professional Education—Core and Non-Core Subject Matter

All continuing professional education must be in either core or non-core subject matter. The Joint Board received a number of comments requesting expansion and clarification of the content that would be classified as core or non-core credit. These regulations adopt the same definition of core and non-core continuing professional education material as proposed. The Joint Board recognizes that more specific rules proscribing the required content could provide greater certainty for qualifying sponsors and enrolled actuaries regarding the designation of credits as core and non-core. However, given the frequent changes in pension law, the impact of new court decisions, and other changing factors that affect an enrolled actuary's practice, it is important to keep the definition of the content requirement somewhat flexible. The Joint Board relies on the integrity and judgment of the qualifying sponsors to provide appropriate material and to appropriately categorize the material as core or non-core.

Similarly, a number of commenters requested a more specific definition of ethical standards for purposes of meeting the ethics requirement of the continuing education requirement. Although the Joint Board has not amended the regulation, it notes that courses that include discussion of actuarial codes of conduct, actuarial responsibilities and any actions discussed in section 901.20 of the regulations would comply with this requirement.

These regulations redefine core subject matter as 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. These regulations further specify that core subject matter includes all materials included on the syllabi of any of the pension actuarial examinations offered by the Joint Board during the current enrollment cycle and the enrollment cycle immediately preceding the current enrollment cycle.

These regulations retain the definition of non-core subject matter as program content designed to enhance the knowledge of an enrolled actuary in matters related to the performance of pension actuarial services. These regulations provide that examples of non-core subject matter include economics, computer programming, pension accounting, investment and finance, risk theory, communication skills, and business and general tax law.

### 3. Qualifying Program Requirement

These regulations do not change the requirement that a program used to earn continuing professional education credit must be a qualifying program. These regulations modify the definition of qualifying program to be a course of learning that—(A) Is conducted by a qualifying sponsor who identifies the program as a qualifying program; (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 to those who have successfully completed the program; and (H) provides a certificate of instruction to those who have served as instructors, discussion leaders, or speakers.

These regulations provide that qualifying sponsors are sponsors recognized as such by the Executive Director and whose programs offer opportunities for continuing professional education in subject matter within the scope of the continuing professional education requirement. In response to comments, these regulations have been changed so that they do not

prohibit a sole proprietor from being a qualifying sponsor. These regulations provide that those seeking recognition as a qualifying sponsor must file a request with the Executive Director and must provide all information deemed necessary for approval by the Executive Director, including information to establish that all programs identified as qualifying programs by the qualifying sponsor will satisfy the requirements for qualifying programs. These regulations provide that recognition as a qualifying sponsor by the Executive Director shall be effective when approved unless the Executive Director provides that it shall be effective on a different date, and shall terminate at the end of the sponsor enrollment cycle. The sponsor enrollment cycles are three-year periods that begin one-year later than the enrollment cycles, starting with the sponsor enrollment cycle beginning on January 1, 2012. For qualifying sponsors approved on or after January 1, 2008, and before January 1, 2012, the applicable sponsor enrollment cycle will end December 31, 2011.

These regulations provide that a program's qualifying sponsor shall furnish each individual who successfully completed the qualifying program with a certificate listing the name of the participant, the name of the qualifying sponsor, the title, location, and speaker(s) of each session, the date(s) of participation, the total credit hours earned, how many of those hours consisted of core and non-core subject matter, how many of those hours relate to ethics, and how many of the hours were earned for a formal program with respect to the participant. In response to comments, these regulations clarify that it is only the qualifying sponsor of a program that may issue a certificate of participation.

These regulations provide that qualifying sponsors shall provide each instructor, discussion leader, or speaker with a certificate of instruction that lists the name of the instructor, discussion leader, or speaker, the name of the qualifying sponsor, the title and location of each session at which the individual was an instructor, discussion leader, or speaker, the date(s) of the program, the total credit hours earned, how many of those hours consisted of core and non-core subject matter, how many of those hours relate to ethics, and whether the program is a formal program with respect to the instructor.

The proposed regulations would have defined separate types of qualifying programs for formal programs, correspondence and individual study programs, and teleconferencing programs. These regulations do not

segregate qualifying programs into these types. Instead, these regulations provide that certain qualifying programs qualify as formal programs. Each type of program that would have been separately defined under the proposed regulations may still satisfy the requirements of a qualifying program.

In response to comments, the Joint Board notes that the qualifying sponsor must take reasonable steps to verify participation. The nature of the program will affect the means by which the qualifying sponsor verifies participation. Under this approach, a qualifying program that is either a teleconference or a program attended in person may be a formal program but the manner in which the qualifying sponsor verifies participation will be different depending on the manner of participation. In contrast, a correspondence or individual study program would never be a formal program but could nonetheless be a qualifying program if the qualifying sponsor verifies participation (for example, with a written examination).

In response to comments, these regulations clarify that a qualifying sponsor must maintain records to verify that each program it sponsors is a qualifying program, including the certificates of completion, certificates of instruction, and outlines and course material. In the case of programs with more than one session, the qualifying sponsor must keep records to verify which session(s) each participant completed. These regulations clarify that all of these records are required to be maintained for six years after the end of the sponsor enrollment cycle in which the program was held.

Several commenters asked for clarification on the ability to use emerging technologies for record retention and transmission. The regulations do not specify the format in which records must be maintained or provided but merely require that copies be provided and produced upon request. Accordingly, records may be maintained electronically so long as a copy can be produced upon request.

### 4. Formal Programs

These regulations require at least one-third of the required hours to consist of participation in a formal program. In response to comments on the proposed regulations, these regulations expand the definition of a formal program to take into account modern technologies that permit participation and interaction among participants who are in different locations.

Under these regulations, whether a program qualifies as a formal program is

determined on a participant-by-participant basis. These regulations provide that a qualifying program qualifies as a formal program with respect to a participant only if the participant simultaneously participates in the program in the same physical location with at least two other participants engaged in substantive pension service. The participants with respect to whom the program is a formal program must also have the opportunity to interact with another individual qualified with respect to the course content who serves as an instructor, whether or not the instructor is in the same physical location as the participants. Groups of three or more participants who are in the same physical location may participate in a formal program in person, via the Internet, videoconferencing, or teleconferencing. If the qualifying program is pre-recorded, to qualify as a formal program there must be a qualified individual who serves as the instructor and is available to answer questions immediately following the pre-recorded program.

Under these regulations, a qualifying program is a formal program with respect to the instructor only if the instructor is in the physical presence of at least three other individuals engaged in substantive pension service.

##### 5. Alternate Ways of Earning Continuing Professional Education Credit

These regulations provide six ways to satisfy the continuing professional education requirement other than through participation in a qualifying program. First, up to half of the required hours may be satisfied by serving as an instructor, discussion leader, or speaker at a qualifying program. For this purpose the instructor, discussion leader, or speaker is credited with 4 hours of continuing professional education credit for each 50 minutes completed during a qualifying program. In response to a comment, these regulations clarify that if the program is a formal program with respect to the instructor, only the time spent during the actual program is counted toward satisfaction of the formal program requirement. The nature of the subject matter will determine whether the credit hours consist of core or non-core subject matter. These regulations expressly provide that panelists, moderators, and others who are not required to prepare substantive subject matter for their portion of the program are not entitled to credit as an instructor, discussion leader, or speaker, but they may qualify for participation in the program.

Second, up to 25 percent of the required hours may be awarded to the author, co-author, or a person listed as a major contributor for each hour spent on the creation of peer-reviewed material for publication or distribution on matters directly related to core or non-core subject matter. To qualify, the material must be available on reasonable terms for acquisition and use by all enrolled actuaries.

If the material is re-published or re-distributed, credit will be awarded only for time spent revising a substantial portion of the material; for example, to reflect changes in law or practices relative to the performance of pension actuarial services.

Third, these regulations permit the Joint Board to award continuing professional education credit for service on (any of) its advisory committee(s), to the extent that the Joint Board considers awarding such credit is warranted by the service rendered. This provision recognizes the fact that the work done by the members of the advisory committee involves detailed review of materials that constitute core subject matter.

Fourth, these regulations permit the Joint Board to award education credit for participation in drafting questions for use on Joint Board examinations or in pretesting its examinations, to the extent that the Joint Board considers awarding such credit appropriate. These regulations limit the education credit for preparation of Joint Board examinations to 50 percent of the continuing professional education requirement for the applicable enrollment cycle.

One commenter suggested that the regulations should specify the number of continuing professional education credits that may be granted for service on an Advisory Committee to the Joint Board and other committees involved in the preparation of enrollment examinations, and to eliminate the 50 percent limit on continuing professional education requirements that can be satisfied by service on an examination writing committee. The regulations retain the Joint Board's authority to determine how many credits are granted for service rendered.

In the Board's experience, most actuaries who serve on an examination writing committee tend to work on only one of the examinations; the Board believes that the scope of the material covered on a given examination is not broad enough for service on a writing committee to count toward more than 50% of the continuing professional education requirements for a given enrollment cycle. Therefore, although the Board appreciatively acknowledges

the substantial time and effort expended by members of the writing committees, the final regulations retain the 50% limit.

The commenter also suggested that service on an Advisory Committee to the Joint Board throughout an entire enrollment cycle fulfill all the continuing professional education requirements for that cycle, including the requirement to earn credits related to ethical standards. However, the Board does not believe that the exam syllabus or other work typically done by an Advisory Committee includes enough material directly related to ethical standards to fulfill the requirement for this type of credit. Therefore, the Board does not anticipate that credits related to ethical standards would be granted on the basis of service on an Advisory Committee.

Fifth, these regulations provide that 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. Separate provisions, described in the next paragraph, apply to the Joint Board's examinations. These regulations further provide that such credit is limited to the number of hours scheduled for the examination that are attributable to content that qualifies as either core or non-core subject matter and that, regardless of the nature of the content, none of the credit counts toward the core credit requirement. All of an enrolled actuary's non-core credit requirement may be satisfied with this type of credit.

Sixth, these regulations provide that enrolled actuaries who are enrolled prior to the beginning of an enrollment cycle may satisfy the entire continuing professional education requirement for the enrollment cycle by both (1) achieving a passing score on the Joint Board pension examination administered during the enrollment cycle and (2) completing a minimum of 12 hours of continuing professional education through participation in formal programs during the enrollment cycle.

##### 6. Waivers

These regulations permit the Executive Director to waive all or part of an enrolled actuary's continuing professional education requirement. An enrolled actuary seeking such a waiver must submit a request for a waiver to the Executive Director. This request must contain evidence sufficient to demonstrate that the enrolled actuary made every effort throughout the

enrollment cycle to participate in one or more qualifying programs that would have satisfied the continuing professional education requirements. The enrolled actuary is required to submit supporting documentation with the waiver application as well as any additional documentation or explanation deemed necessary by the Executive Director. The proposed regulations would have imposed a deadline on the waiver application. Instead, these regulations provide that the enrolled actuary seeking to rely on a waiver must receive the waiver from the Executive Director before filing an application for renewal of enrollment.

#### *IV. Inactive Enrolled Actuaries*

These regulations provide that the Executive Director shall maintain a roster of individuals who are in inactive status, in addition to rosters of individuals who are duly enrolled and those whose enrollment has been suspended or terminated. These regulations also give the Executive Director explicit permission to publish any or all of the rosters, including display on the Joint Board's Web site, to the extent permitted by law.

These regulations extend the period of time that an individual may remain on the roster of inactive enrolled actuaries from three years to up to three enrollment cycles. Under these regulations, a person who is on the roster of inactive enrolled actuaries for three enrollment cycles without returning to active status must satisfy the requirements for initial enrollment to become an active enrolled actuary. For this purpose, these regulations provide a transition rule that treats enrolled actuaries who are inactive or retired as of April 1, 2010 as if they were placed on the roster of inactive enrolled actuaries on that date.

To remain on the roster of active enrolled actuaries, an enrolled actuary must submit a timely application for renewal showing satisfaction of the requirements for reenrollment, including completion of the required continuing professional education hours within the appropriate time frame.

The Executive Director will automatically move enrolled actuaries who do not submit a timely application for reenrollment and enrolled actuaries who submit an application that on its face does not show information sufficient to satisfy the requirements for renewal (for example, an application that does not show sufficient continuing professional education credits). Such enrolled actuaries will be placed on the roster of inactive enrolled actuaries as of April 1 following the March 1 due date

for the application. Enrolled actuaries who submit an application that on its face does not show information sufficient to satisfy the requirements for renewal will not be entitled to a refund of the application fee. Enrolled actuaries who submit an application that on its face does not show information sufficient to satisfy the requirements for renewal will be considered inactive as of the April 1 immediately following the March 1 due date for the application even if the Executive Director does not become aware of the insufficiency of the application until after April 1.

In addition, the Executive Director may audit renewal applications to verify the information submitted. If the Executive Director determines that the information on the application is inaccurate, the Executive Director will move the enrolled actuary to the roster of inactive enrolled actuaries only after notifying the enrolled actuary of the Executive Director's intent to do so and giving the enrolled actuary 60 days to respond. The Executive Director will consider any written response in making a final determination as to eligibility for renewal of enrollment. The Executive Director will notify the enrolled actuary by mail of the final determination as to whether or not to place the enrolled actuary on the inactive roster at that time. If the Executive Director makes a final determination to place an individual on the roster of inactive enrolled actuaries, the individual may seek review of the determination from the Joint Board by submitting a request to the Joint Board within 30 days of the notice of final determination.

These regulations provide that while an individual remains on the roster of inactive enrolled actuaries, such person may not indicate to others that he or she is an enrolled actuary and is not eligible to perform actuarial services as an enrolled actuary under ERISA or the Internal Revenue Code. These regulations provide that an individual still on the roster of inactive enrolled actuaries who wishes to return to active status may file an application for renewal of enrollment, but the requirements for reenrollment are different depending on whether the applicant is in the first, second, or third enrollment cycle on the roster of inactive enrolled actuaries.

These regulations provide that individuals who apply for renewal of enrollment during their first enrollment cycle on the inactive roster must complete 36 hours of continuing professional education between the beginning of the prior enrollment cycle

and the date of the application for renewal.

These regulations provide that individuals who apply for renewal of enrollment during their second enrollment cycle on the inactive roster must complete 48 hours of continuing professional education credit plus demonstrate 18 months of certified responsible pension actuarial experience. These regulations provide that the continuing professional education credit must have been earned since the beginning of the applicant's first enrollment cycle on the inactive roster. The qualifying responsible pension actuarial experience must have occurred after the beginning of the applicant's first enrollment cycle on the inactive list.

These regulations provide that individuals who apply for renewal of enrollment during their third enrollment cycle on the inactive roster must complete 60 hours of continuing professional education credit plus demonstrate 18 months of certified responsible pension actuarial experience. For this purpose, these regulations provide that the continuing professional education credit must have been earned since the beginning of the applicant's second enrollment cycle and the qualifying actuarial experience must have occurred after the beginning of the applicant's second enrollment cycle on the inactive list.

Regardless of when the inactive enrolled actuary applies for renewal, these regulations provide that any continuing professional education credit used to qualify for reenrollment may not also be used to satisfy the continuing professional education requirement during the applicant's first enrollment cycle back on the active roster.

#### *V. Standards of Performance*

These regulations also expand upon the standards of performance of actuarial services. These regulations add a requirement that an enrolled actuary shall perform actuarial services only in accordance with all of the duties and requirements for such persons under applicable law and consistent with relevant generally accepted standards for professional responsibility and ethics.

Several comments were received with respect to the standards of practice provisions that were modeled on the obligations set forth in Circular 230 of all persons practicing before the IRS. The Joint Board believes that the rules in Circular 230 pertaining to due diligence, solicitations, prompt disposition of pending matters, and the return of client records are equally

pertinent to practice before the PBGC and DOL, as well as the IRS. These provisions have been retained unchanged from the proposal, except that with respect to the return of client records. With respect to the return of client records, a commenter asked that the provision be clarified to provide the ability to retain records that implicate intellectual property rights. The Board believes that the duty to return or make available records to the client should not be made narrower than the scope of the provision in Circular 230. Nonetheless, to conform more specifically to the concept of Circular 230 and the purpose of incorporating the provisions into these regulations, the provision regarding "Records of the client" for this purpose has been modified to provide only for the return of documents necessary to comply with legal obligations under ERISA and the Internal Revenue Code.

These final regulations modify the rules regarding conflicts of interest. The Joint Board received several comments on the proposed rule to require that disclosure of conflicts of interest be made in writing to all affected parties and that the affected parties agree in writing to the enrolled actuary performing the services. After consideration of these comments, the Joint Board has determined that it will adopt rules that are similar to the conflict of interest rules that apply to those practicing before the Internal Revenue Service. See Treasury Department Circular No. 230, 31 CFR 10.29. Accordingly, the regulations provide that, unless an exception applies, an enrolled actuary shall not perform actuarial services for a client if the representation involves a conflict of interest. A conflict of interest exists if either (1) the representation of one client will be directly adverse to another client; or (2) there is a significant risk that the representation of one or more clients will be materially limited by the enrolled actuary's responsibilities to another client, a former client, or by a personal interest of the enrolled actuary. Notwithstanding the existence of a conflict of interest, the enrolled actuary may represent a client if (1) the enrolled actuary reasonably believes that the enrolled actuary will be able to provide competent and diligent representation to each affected client, (2) the representation is not prohibited by law, and (3) 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.

Nothing in these final regulations is intended to alter the rules for practice

before the Internal Revenue Service under Treasury Department Circular No. 230.

The proposed regulations would have imposed a requirement that, upon learning of another enrolled actuary's material violation of the standards of performance of actuarial services, an enrolled actuary report the violation to the Executive Director. The Joint Board received many comments in response to this proposal. Several commenters suggested the elimination of the proposed reporting requirement. In the alternative, commenters asked that the requirement be significantly modified. Commenters were concerned that the reporting requirement would discourage cooperation and sharing of information among enrolled actuaries and that it would conflict with other rules that require enrolled actuaries not to disclose confidential or privileged information. Commenters also suggested that an enrolled actuary should not be required to report violations that are resolved through discussion with the other enrolled actuary. Finally, commenters asked for a clarification of the term material violation.

In light of the comments received, the Joint Board decided not to include the proposed reporting requirement as part of the standards of performance for enrolled actuaries. Without amendment, the regulations already include a rule that if an officer or employee of the Department of Treasury, the Department of Labor, the Pension Benefit Guaranty Corporation, or a member of the Joint Board has reason to believe that an enrolled actuary has violated any provision of the regulations, or if such person receives information to that effect, he or she may inform the Executive Director. Without amendment, the regulations already provide that others may make such a report to the Executive Director, an officer or employee of the Department of Treasury, the Department of Labor, the Pension Benefit Guaranty Corporation, or a member of the Joint Board. These regulations amend that provision only to provide that the optional report should be made directly to the Executive Director. Self-policing is an important part of maintaining the high standards of the profession, and the Joint Board encourages enrolled actuaries to report violations of the regulations to the Executive Director. However, in light of the concerns raised by commenters, the Joint Board decided not to change the existing rule except to provide that any report should be made directly only to the Executive Director.

In response to comments, these regulations clarify that the requirement

for an enrolled actuary to ensure that the actuarial assumptions are reasonable individually and in combination, and the actuarial cost method and the actuarial method of valuation of assets are appropriate applies unless the actuarial assumptions or methods are mandated by law.

### Special Analyses

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a "significant regulatory action" although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

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. It is hereby certified that the collection of information imposed by these regulations will not have a significant economic impact on a substantial number of small entities. There are presently only about 4000 enrolled actuaries and the changes made by the final regulations will reduce the overall collection of information burden by removing the requirement for participants in continuing education courses to keep course materials. Qualified sponsors of continuing education courses, a few of which are small entities, have a paperwork burden under these regulations that is substantially the same as the pre-existing burden. Therefore, the economic impact of the collection of information requirement will not be significant and the number of small entities affected by the collection of information requirement will not be substantial. Accordingly, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. The notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### Drafting Information

The principal author of these regulations is Michael P. Brewer, IRS

Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). 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.

#### Adoption of Amendments to the Regulations

Accordingly, 20 CFR part 901 is 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.

#### § 901.0 [Amended]

■ **Par. 2.** Section 901.0 is amended by removing the phrase “subpart D of this part is reserved and will set forth” and adding in its place the phrase “subpart D sets forth” in the second sentence.

■ **Par. 3.** Section 901.1 is amended by:

■ **A.** Amending paragraph (g) by removing the phrase “approved by the Joint Board (or its designee) to perform” and adding in its place the phrase “approved by the Joint Board for the Enrollment of Actuaries (the Joint Board), or its designee, to perform”.

■ **B.** Adding new paragraphs (i), (j) and (k) to read as follows:

#### § 901.1 Definitions.

\* \* \* \* \*

(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 has been 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.

#### § 901.10 [Amended]

■ **Par. 4.** Section 901.10 is amended by:

■ **A.** Amending paragraph (a) by removing the phrase “shall agree to comply with the regulations of the Joint Board” and adding in its place the phrase “shall agree to comply with these regulations and any other guidance as required by the Joint Board”.

■ **B.** Adding a second sentence to paragraph (a) to read “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 paragraphs (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) and (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*—(1) *Maintenance of rosters.* The Executive Director shall maintain rosters of—

(i) All actuaries who are duly enrolled under this part;

(ii) All individuals whose enrollment has been suspended or terminated; and

(iii) All individuals who are in inactive status.

(2) *Publication of Rosters.* The Executive Director may publish any or all of the rosters, including display on the Joint Board’s Web site, 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) Each enrolled actuary must file an application for renewal of enrollment on the prescribed form no earlier than October 1, 2010, and no later than March 1, 2011, and no earlier than October 1 and no later than March 1 of every third year thereafter. If March 1 is a Saturday, Sunday, or holiday, the due date shall be the next day that is not a Saturday, Sunday, or holiday.

(2) The effective date of renewal of enrollment for an individual who files a complete renewal application within the time period described in paragraph (d)(1) of this section is the April 1 immediately following the date of application. The effective date of renewal of enrollment for an individual who files a complete renewal application after the due date described in paragraph (d)(1) of this section is the later of the April 1 immediately following the due date of application and the date of the notice of renewal.

(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 professional 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 professional 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 received initial enrollment in 2008 must complete 24 hours of continuing professional education by December 31, 2010. An individual who received initial enrollment in 2009 must complete 12 hours of continuing professional education by December 31, 2010. In either case, 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)(1)(ii), credit will be awarded for continuing professional 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 professional education requirements during 2010, but must file a timely application for renewal during the time period described in paragraph (d)(1) of this section.

(2) *For renewal of enrollment effective April 1, 2014, and every third year thereafter.* (i) A minimum of 36 hours of continuing professional 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)(2)(ii), credit will be awarded for continuing professional 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 professional 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 professional 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) When core subject matter hours are required (including when an individual seeks to return to active

status from inactive status), an individual must complete a minimum of two hours of continuing professional education credit relating to ethical standards, regardless of the total number of core hours required.

(f) *Qualifying continuing professional education*—(1) *In general.* To qualify for continuing professional education credit an enrolled actuary must complete his/her hours of continuing professional 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 professional education credit may be earned under the provisions of paragraph (g) of this section. In any event, no less than  $\frac{1}{3}$  of the total hours of continuing professional education credit required for an enrollment cycle must be obtained by participation in 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 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 professional 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 qualifying sponsor, within the meaning of paragraph (f)(3) of this section, who identifies the program as a qualifying program;

(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 each person who successfully completed the program; and

(H) Provides a certificate of instruction, within the meaning of paragraph (f)(3)(v) of this section, to each person who served an instructor, discussion leader, or speaker.

(ii) *Formal programs*—(A)

*Participants.* Formal programs are programs that meet all of the requirements of this paragraph (f)(2)(ii) and paragraph (f)(2)(i) of this section. Whether a program qualifies as a formal program is determined on a participant-by-participant basis. A qualifying program qualifies as a formal program with respect to a participant if the participant simultaneously participates in the program in the same physical location with at least two other participants engaged in substantive pension service, and the participants have the opportunity to interact with another individual qualified with respect to the course content who serves as an instructor, whether or not the instructor is in the same physical location. Groups of three or more participants who are in the same physical location may participate in a formal program in person or via the Internet, videoconferencing, or teleconferencing. If the qualifying program is pre-recorded, to qualify as a formal program, there must be a qualified individual who serves as the instructor and is available to answer questions immediately following the pre-recorded program.

(B) *Instructor.* A qualifying program is a formal program with respect to the instructor only if the program is a formal program under paragraph (f)(2)(ii)(A) of this section with respect

to at least three participants and the instructor is in the physical presence of at least three other individuals engaged in substantive pension service.

(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.

(ii) *Recognition by the Executive Director*. An organization requesting qualifying sponsor status shall file a sponsor agreement request with the Executive Director and furnish information in support of such request 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. Recognition as a qualifying sponsor by the Executive Director shall be effective when approved, unless the Executive Director provides that it shall be effective on a different date, and shall terminate at the end of the sponsor enrollment cycle. The Executive Director may publish the names of such sponsors on a periodic basis.

(iii) *Sponsor enrollment cycle*—(A) *Transition sponsor enrollment cycle*. The transition sponsor enrollment cycle is the period beginning on January 1, 2008 and ending December 31, 2011.

(B) *Subsequent sponsor enrollment cycles*. After the transition sponsor enrollment cycle, the sponsor enrollment cycle means the three-year period from January 1, 2012, to December 31, 2014, and every three-year period thereafter.

(iv) *Certificates of completion*. Upon verification of successful completion of a qualifying program, the program's qualifying sponsor shall furnish each individual who successfully completed the qualifying program with a certificate listing the following information:

(A) The name of the participant.

(B) The name of the qualifying sponsor.

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

(D) The dates of the program.

(E) The total credit hours earned, the total core and non-core credit hours earned, and how many of those hours relate to ethics.

(F) Whether or not the program is a formal program with respect to the participant.

(v) *Certificates of instruction*. The program's qualifying sponsor 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 qualifying sponsor.

(C) The title and location of the program.

(D) The dates of the program.

(E) The total credit hours earned and the total core and non-core credit hours earned for the program, and how many of those hours relate to ethics.

(F) Whether or not the program is a formal program with respect to the instructor.

(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 professional 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 professional 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 professional education requirements of paragraph (f) of this section. If the qualifying program is a formal program with respect to the instructor, only the time spent during the actual program is counted toward satisfaction of the formal program requirement.

(ii) The credit for instruction and preparation may not exceed 50 percent of the continuing professional 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 professional 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 professional 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 professional 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 professional 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 professional 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 professional 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 professional education by attending formal program(s) 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) *Recordkeeping requirements—(1) Qualifying sponsors.* A qualifying sponsor must maintain records to verify that each program it sponsors is a qualifying program within the meaning of paragraph (f)(2) of this section, including the certificates of completion, certificates of instruction, and outlines and course material. In the case of programs of more than one session, records must be maintained to verify each session of the program that is completed by each participant. Records required to be maintained under this paragraph must be retained by the qualifying sponsor for a period of six years following the end of the sponsor enrollment cycle in which the program is held.

(2) *Enrolled actuaries—(i) Qualifying program credits as a participant.* To receive continuing professional education credit for completion of hours of continuing professional education 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 enrollment cycle in which the credits are earned.

(ii) *Qualifying program credits as an instructor, discussion leader, or speaker.* To receive continuing professional 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 enrollment cycle in which the credits are earned.

(iii) *Credit for publications.* To receive continuing professional 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 enrollment cycle in which the credits are earned:

(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 earned, and the total core and non-core credit hours earned, and how many of those hours relate to ethics.

(iv) *Other credits.* To receive continuing professional 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 enrollment cycle in which the credits are earned.

(k) *Waivers.* (1) Waiver from the continuing professional 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 enrollment cycle to participate in one or more qualifying programs that would have satisfied the continuing professional education requirements.

(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 professional education requirements within the allotted time, the individual will be placed on the roster of inactive enrolled individuals.

(4) Individuals seeking to rely on a waiver of the continuing professional education requirements must receive the waiver from the Executive Director before filing an application for renewal of enrollment.

(l) *Failure to comply.* (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) Automatic placement on the inactive roster.* To remain on the roster of active enrolled actuaries, an enrolled actuary must submit a timely application for renewal showing satisfaction of the requirements for reenrollment, including completion of the required continuing professional education hours, within the appropriate time frame. The Executive Director will move an enrolled actuary who does not submit such an application for reenrollment from the roster of enrolled actuaries to the roster of inactive enrolled actuaries as of April 1 following the March 1 due date for the application. However, if an enrolled actuary completes the required number of continuing professional education hours after the close of the enrollment cycle, submits an application for reenrollment, and is informed by the Executive Director before April 1st that the enrollment has been renewed, then the Executive Director will not move such individual to the roster of inactive enrolled actuaries at that time.

(ii) *Placement on the inactive roster after notice and right to respond.* The Executive Director will move an enrolled actuary who does submit a timely application of renewal that shows timely completion of the required continuing professional education to the inactive roster only after giving the enrolled actuary 60 days to respond as described in paragraph (l)(1) of this section.

(iii) *Length on time on inactive roster.* An individual may remain on the roster of inactive enrolled actuaries for a period up to three enrollment cycles from the date renewal would have been effective.

(iv) *Consequence of being on the inactive roster.* 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.

(v) *Returning to active status.* 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 and of 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 effective with the date the notice of approval is mailed to that individual by the Executive Director.

(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. Otherwise, the name of such individual 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 who is in inactive or retired status as of April 1, 2010, will be deemed to have been placed in inactive status on April 1, 2010.

(6) An individual 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 professional 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 professional education and qualifying experience requirements set forth in this subsection. Continuing professional education credits applied to meet the requirements for reenrollment under this paragraph (l)(6) 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 professional education requirements for return to active enrollment from inactive status.* (i) During the first inactive enrollment cycle; 36 hours of qualifying continuing professional education 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 professional education credit earned during 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 professional 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 certified responsible pension actuarial experience, must be completed since the start of the first inactive enrollment cycle. Any hours of continuing professional education credit earned during 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 professional 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 certified responsible pension actuarial experience, must be completed since the start of the second inactive enrollment cycle. Any hours of continuing professional education credit earned during the second inactive enrollment cycle may be applied in satisfying this requirement. No hours earned during 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 professional 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 professional education.

\* \* \* \* \*

(n) *Verification.* The Executive Director or his/her designee may request and review the continuing professional 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 qualifying 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 and the effective date of an enrolled actuary's renewal:

*Example 1.* Individual E, who was initially enrolled before January 1, 2008, completes 12 hours of core continuing professional

education credit and 24 hours of non-core continuing professional education credit between January 1, 2011, and December 31, 2013. E files a complete application for reenrollment on February 28, 2014. E's reenrollment is effective as of April 1, 2014.

*Example 2.* Individual F, who was initially enrolled before January 1, 2008, also completes 12 hours of core continuing professional education credit and 24 hours of non-core continuing professional education credit between January 1, 2011, and December 31, 2013. However, F does not file an application for reenrollment until March 20, 2014. The Joint Board notifies F that it has granted F's application on June 25, 2014. Accordingly, effective April 1, 2014, F is placed on the roster of inactive enrolled actuaries. F returns to active status as of June 25, 2014. F is ineligible to perform pension actuarial services as an enrolled actuary under ERISA and the Internal Revenue Code from April 1 through June 24, 2014.

*Example 3.* Individual G, who was initially enrolled before January 1, 2008, completes only 8 hours of core continuing professional education credit and 24 hours of non-core continuing professional education credit between January 1, 2011, and December 31, 2013. G completes another 6 hours of core continuing professional education on January 15, 2014, and files an application for return to active status on January 20, 2014. G's application shows the timely completion of 32 hours of continuing professional education plus the additional 4 hours of continuing professional education earned after the end of the enrollment cycle. The Joint Board notifies G that it has granted the application on April 20, 2014. Accordingly, effective April 1, 2014, G is placed on the roster of inactive enrolled actuaries. G returns to active status as of April 20, 2014. G is ineligible to perform pension actuarial services as an enrolled actuary under ERISA and the Internal Revenue Code from April 1 through April 19, 2014. Of the 6 hours of continuing professional education earned by G on January 15, 2014, only 2 hours may be applied to the enrollment cycle that ends December 31, 2016.

*Example 4.* (i) Individual H, who was initially enrolled before January 1, 2008, completes 5 hours of core continuing professional education credit and 10 hours of non-core continuing professional education credit between January 1, 2011, and December 31, 2013. Accordingly, effective April 1, 2014, E is placed on the 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) H completes 7 hours of core continuing professional education credit and 14 hours of non-core continuing professional education credit between January 1, 2014, and May 24, 2016. Because H has completed 12 hours of core continuing professional education and 24 hours of non-core continuing professional education during the last active enrollment period and the initial period when on inactive status, H has satisfied the requirements for reenrollment during the first inactive cycle. Accordingly, H may file an

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

*Example 5.* (i) The facts are the same as in *Example 4* except H completes 2 hours of core continuing professional education credit and 8 hours of non-core continuing professional education credit between January 1, 2014, and December 31, 2016. Thus, because H did not fulfill the requirements for return to active status during his first inactive cycle, H 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, H must complete an additional 38 hours of continuing professional 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 certified responsible pension actuarial experience during the period beginning on January 1, 2014.

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

*Example 6.* (i) The facts are the same as in *Example 4* except H completes 2 hours of core continuing professional education credit and 8 hours of non-core continuing professional education credit between January 1, 2014, and December 31, 2016, and 12 hours of core continuing professional education credit and 24 hours of non-core continuing professional education credit between January 1, 2017, and December 31, 2019. Thus, because H did not fulfill the requirements for return to active status during his first or second inactive cycles, H 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, H must complete an additional 24 hours of continuing professional 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 certified responsible pension actuarial experience during the period beginning on January 1, 2017.

(iii) Note that the total of 15 hours of continuing professional education credit that E completes between January 1, 2011, and December 31, 2013, as well as the 10 hours of continuing professional education credit between January 1, 2014, and December 31, 2016, are not counted toward H's return to active status and are not taken into account toward the additional hours of continuing professional education credit that H 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 7.* (i) Individual J, who was initially enrolled July 1, 2012, completes 1 hour of core continuing professional education credit and 2 hours of non-core continuing professional education credit between January 1, 2012, and December 31, 2013. Accordingly, effective April 1, 2014, J is placed on the 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 professional education credit and 4 hours of non-core continuing professional education credit between January 1, 2014, and October 6, 2014. Because J did not complete the required 12 hours of continuing professional education (of which at least 6 hours must consist of core subject matter) during F's initial enrollment cycle, J is not eligible to file an application for a return to active enrollment on October 6, 2014, notwithstanding the fact that had J completed such hours between January 1, 2012, and December 31, 2013, J would have satisfied the requirements for renewed enrollment effective April 1, 2014.

(iii) Accordingly, J must complete an additional 24 hours of continuing professional education (of which at least 12 hours must consist of core subject matter) during his/her first inactive enrollment cycle before applying for renewal of enrollment.

*Example 8.* The facts are the same as in *Example 7* except that J completes 17 hours of core continuing professional education credit and 16 hours of non-core continuing professional education credit between January 1, 2014, and February 12, 2015. Accordingly, because as of February 12, 2015, J satisfied the continuing professional education requirements as set forth in paragraph (e)(2) of this section without regard to paragraph (e)(2)(ii) thereof, J 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) of this section, this section applies to the enrollment cycle beginning January 1, 2011, 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) to 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, the date of successful completion of an examination is generally the date a candidate sits for the examination, provided that the candidate receives a passing grade on that examination. However, an applicant who sat for an

examination prior to the effective date of these regulations will be deemed to have sat for 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:

- A. Revising paragraphs (b), (d), (e), (f), and (g).
- B. Redesignating paragraph (h) as paragraph (k), and adding new paragraph (h).
- C. Adding and reserving paragraph (i).
- D. Adding new paragraphs (j) and (l).

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 generally accepted standards for professional responsibility and ethics.

(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.

\* \* \* \* \*

(d) *Conflicts of interest.* (1) Except as provided in paragraph (d)(2) of this section, an enrolled actuary shall not perform actuarial services for a client if the representation involves a conflict of interest. A conflict of interest exists if—

- (i) The representation of one client will be directly adverse to another client; or
- (ii) There is a significant risk that the representation of one or more clients will be materially limited by the enrolled actuary's responsibilities to another client, a former client, or by a personal interest of the enrolled actuary.

(2) Notwithstanding the existence of a conflict of interest under paragraph (d)(1) of this section, the enrolled actuary may represent a client if—

- (i) The enrolled actuary reasonably believes that he or she will be able to provide competent and diligent representation to each affected client;
- (ii) The representation is not prohibited by law; and
- (iii) 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.

(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) Except as mandated by law, 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 required forms under ERISA and the Internal Revenue Code. 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 obligations under ERISA and the Internal Revenue Code.

(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 obligations under ERISA and the Internal Revenue Code. 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.

\* \* \* \* \*

(l) The rules of this section apply to all actuarial services and related acts performed on or after May 2, 2011.

■ **Par. 10.** Section 901.31 is amended by revising paragraphs (a) and (c) 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.

Approved: March 2, 2011.

**Carolyn Zimmerman,**  
Chairman, Joint Board for the Enrollment of Actuaries.

[FR Doc. 2011-7573 Filed 3-29-11; 11:15 am]

BILLING CODE 4810-25-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Parts 510, 520, 522, 524, and 558**

[Docket No. FDA-2011-N-0160]

**Animal Drugs, Feeds, and Related Products; Withdrawal of Approval of New Animal Drug Applications; Chorionic Gonadotropin; Cuprimyxin; Diethylcarbamazine; Levamisole; Nitrofurazone; Phenylbutazone; Pyrantel; Tylosin; Tylosin and Sulfamethazine**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations by removing those portions that reflect approval of 13 new animal drug applications (NADAs). In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of these NADAs.

**DATES:** This rule is effective April 11, 2011.

**FOR FURTHER INFORMATION CONTACT:** John Bartkowiak, Center for Veterinary Medicine (HFV-212), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240-276-9079, e-mail: [john.bartkowiak@fda.hhs.gov](mailto:john.bartkowiak@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** The sponsors of the 13 approved NADAs listed in table 1 have requested that FDA withdraw approval because the products are no longer manufactured or marketed.