

## PART 900—STATEMENT OF ORGANIZATION

- Sec.
- 900.1 Basis.
- 900.2 Establishment.
- 900.3 Composition.
- 900.4 Meetings.
- 900.5 Staff.
- 900.6 Offices.
- 900.7 Delegations of authority.

AUTHORITY: Sec. 3041-2, Pub. L. 93-406, 88 Stat. 829, 1002 (29 U.S.C. 1241-2).

SOURCE: 40 FR 18776, Apr. 30, 1975, unless otherwise noted.

### § 900.1 Basis.

This statement is issued by the Joint Board for the Enrollment of Actuaries (the Joint Board) pursuant to the requirement of section 552 of title 5 of the United States Code that every agency shall publish in the FEDERAL REGISTER a description of its central and field organization.

### § 900.2 Establishment.

The Joint Board has been established by the Secretary of Labor and the Secretary of the Treasury pursuant to section 3041 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1241). Bylaws of the Board have been issued by the two Secretaries.<sup>1</sup>

### § 900.3 Composition.

Pursuant to the Bylaws, the Joint Board consists of three members appointed by the Secretary of the Treasury and two appointed by the Secretary of Labor. The Board elects a Chairman from among the Treasury Representatives and a Secretary from among the Department of Labor Representatives. The Pension Benefit Guaranty Corporation may designate a non-voting representative to sit with, and participate in, the discussions of the Board. All decisions of the Board are made by simple majority vote.

### § 900.4 Meetings.

The Joint Board meets on the call of the Chairman at such times as are necessary in order to consider matters re-

quiring action. Minutes are kept of each meeting by the Secretary.

### § 900.5 Staff.

(a) The Executive Director advises and assists the Joint Board directly in carrying out its responsibilities under the Act and performs such other functions as the Board may delegate to him.

(b) Members of the staffs of the Departments of the Treasury and of Labor, by arrangement with the Joint Board, perform such services as may be appropriate in assisting the Board in the discharge of its responsibilities.

### § 900.6 Offices.

The Joint Board does not maintain offices separate from those of the Departments of the Treasury and Labor. Its post office address is Joint Board for the Enrollment of Actuaries, c/o Department of the Treasury, Washington, D.C. 20220.

### § 900.7 Delegations of authority.

As occasion warrants, the Joint Board may delegate functions to the Chairman or the Executive Director, including the authority to receive applications and to give notice of actions. Any such delegation of authority is conferred by resolution of the Board.

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

- Sec.
- 901.0 Scope.

### Subpart A—Definitions and Eligibility To Perform Actuarial Services

- 901.1 Definitions.
- 901.2 Eligibility to perform actuarial services.

### Subpart B—Enrollment of Actuaries

- 901.10 Application for enrollment.
- 901.11 Enrollment procedures.
- 901.12 Eligibility for enrollment of individuals applying for enrollment before January 1, 1976.
- 901.13 Eligibility for enrollment of individuals applying for enrollment on or after January 1, 1976.

<sup>1</sup>Copy filed with the Office of the Federal Register. Copies may also be obtained from the Executive Director of the Board.

## § 901.0

### Subpart C—Standards of Performance for Enrolled Actuaries

901.20 Standards of performance of actuarial services.

### Subpart D—Suspension or Termination of Enrollment

- 901.30 Authority to suspend or terminate enrollment.
- 901.31 Grounds for suspension or termination of enrollment.
- 901.32 Receipt of information concerning enrolled actuaries.
- 901.33 Initiation of proceeding.
- 901.34 Conferences.
- 901.35 Contents of complaint.
- 901.36 Service of complaint and other papers.
- 901.37 Answer.
- 901.38 Supplemental charges.
- 901.39 Reply to answer.
- 901.40 Proof; variance; amendment of pleadings.
- 901.41 Motions and requests.
- 901.42 Representation.
- 901.43 Administrative Law Judge.
- 901.44 Hearings.
- 901.45 Evidence.
- 901.46 Depositions.
- 901.47 Transcript.
- 901.48 Proposed findings and conclusions.
- 901.49 Decision of the Administrative Law Judge.
- 901.50 Appeal to the Joint Board.
- 901.51 Decision of the Joint Board.
- 901.52 Effect of suspension, termination or resignation of enrollment; surrender of enrollment certificate.
- 901.53 Notice of suspension, termination or resignation of enrollment.
- 901.54 Petition for reinstatement.

### Subpart E—General Provisions

- 901.70 Records.
- 901.71 Special orders.

AUTHORITY: Sec. 3042, subtitle C, title 3, Employee Retirement Income Security Act of 1974. (88 Stat. 1002, 29 U.S.C. 1241, 1242), unless otherwise noted.

SOURCE: 42 FR 39200, Aug. 3, 1977, unless otherwise noted.

### § 901.0 Scope.

This part contains rules governing the performance of actuarial services under the Employee Retirement Income Security Act of 1974, hereinafter also referred to as ERISA. Subpart A of this part sets forth definitions and eligibility to perform actuarial services; subpart B of this part sets forth rules governing the enrollment of actuaries;

## 20 CFR Ch. VIII (4–1–00 Edition)

subpart C of this part sets forth standards of performance to which enrolled actuaries must adhere; subpart D of this part is reserved and will set forth rules applicable to suspension and termination of enrollment; and subpart E of this part sets forth general provisions.

### Subpart A—Definitions and Eligibility To Perform Actuarial Services

#### § 901.1 Definitions.

As used in this part, the term:

(a) *Actuarial experience* means the performance of, or the direct supervision of, services involving the application of principles of probability and compound interest to determine the present value of payments to be made upon the fulfillment of certain specified conditions or the occurrence of certain specified events.

(b) *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.

(c) *Month of responsible actuarial experience* means a month during which the actuary spent a substantial amount of time in responsible actuarial experience.

(d) *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.

(4) Actuarial gain or loss.

(e) *Month of responsible pension actuarial experience* means a month during which the actuary spent a substantial amount of time in responsible pension actuarial experience.

(f) *Applicant* means an individual who has filed an application to become an enrolled actuary.

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

(h) *Actuarial services* means performance of actuarial valuations and preparation of any actuarial reports.

**§ 901.2 Eligibility to perform actuarial services.**

(a) *Enrolled actuary.* Subject to the standards of performance set forth in subpart C of this part, any individual who is an enrolled actuary as defined in § 901.1(g) may perform actuarial services required under ERISA or regulations thereunder. Where a corporation, partnership, or other entity is engaged to provide actuarial services, such services may be provided on its behalf only by an enrolled actuary who is an employee, partner or consultant.

(b) *Government officers and employees.* No officer or employee of the United States in the executive, legislative, or judicial branch of the Government, or in any agency of the United States, including the District of Columbia, may perform actuarial services required under ERISA or regulations thereunder if such services would be in violation of 18 U.S.C. 205. No Member of Congress or Resident Commissioner (elect or serving) may perform such actuarial services if such services would be in violation of 18 U.S.C. 203 or 205.

(c) *Former government officers and employees—(1) Personal and substantial participation in the performance of actuarial services.* No former officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, shall perform actuarial services required under ERISA or regulations thereunder or aid or assist in the performance of such actuarial services, in regard to particular

matters, involving a specific party or parties, in which the individual participated personally and substantially as such officer or employee.

(2) *Official responsibility.* No former officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, shall, within 1 year after his employment has ceased, perform actuarial services required under ERISA or regulations thereunder in regard to any particular matter involving a specific party or parties which was under the individual's official responsibility as an officer or employee of the Government at any time within a period of 1 year prior to the termination of such responsibility.

**Subpart B—Enrollment of Actuaries**

**§ 901.10 Application for enrollment.**

(a) *Form.* As a requirement for enrollment, an applicant shall file with the Executive Director of the Joint Board a properly executed application on a form or forms specified by the Joint Board, and shall agree to comply with the regulations of the Joint Board.

(b) *Additional information.* The Joint Board or Executive Director, as a condition to consideration of an application for enrollment, may require the applicant to file additional information and to submit to written or oral examination under oath or otherwise.

(c) *Denial of application.* If the Joint Board proposes to deny an application for enrollment, the Executive Director shall notify the applicant in writing of the proposed denial and the reasons therefor, of his rights to request reconsideration, of the address to which such request should be made and the date by which such request must be made. The applicant may, within 30 days from the date of the written proposed denial, file a written request for reconsideration therefrom, together with his reasons in support thereof, to the Joint Board. The Joint Board may afford an applicant the opportunity to make a personal appearance before the Joint Board. A decision on the request for reconsideration shall be rendered by the Joint Board as soon as practicable. In

the absence of a request for reconsideration within the aforesaid 30 days, the proposed denial shall, without further proceeding, constitute a final decision of denial by the Joint Board.

**§ 901.11 Enrollment procedures.**

(a) *Enrollment.* The Joint Board shall enroll each applicant it determines has met the requirements of these regulations and shall so notify the applicant. Subject to the provisions of subpart D of this part, an individual must renew his or her enrollment in the manner described in paragraph (d) of this section.

(b) *Enrollment certificate.* The Joint Board (or its designee) shall issue a certificate of enrollment to each actuary who is duly enrolled under this part.

(c) *Rosters.* The Executive Director shall maintain rosters of all actuaries who are duly enrolled under this part and of all individuals whose enrollment has been suspended or terminated.

(d) *Renewal of enrollment.* To maintain active enrollment to perform actuarial services under the Employee Retirement Income Security Act of 1974, each enrolled actuary is required to have his/her enrollment renewed as set forth herein. Failure by an individual to receive notification of the renewal requirement from the Joint Board will not be justification for circumvention of such requirement.

(1) All individuals enrolled before January 1, 1990, shall apply for renewal of enrollment on the prescribed form before March 1, 1990. The effective date of renewal for such individuals is April 1, 1990.

(2) Thereafter, applications for renewal will be required of all enrolled actuaries between October 1, 1992, and March 1, 1993, and between October 1 and March 1 of every third year period subsequent thereto.

(3) The Executive Director of the Joint Board will notify each enrolled actuary of the renewal of enrollment requirement at his/her address of record with the Joint Board.

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

(5) Forms required for renewal may be obtained from the Executive Director, Joint Board for the Enrollment of

Actuaries, c/o Department of the Treasury, Washington, DC 20220.

(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 satisfied the following continuing professional education requirements.

(1) *For renewed enrollment effective April 1, 1990.* (i) A minimum of 10 hours of continuing education credit must be completed between (the effective date of these regulations) and December 31, 1989. Of the 10 hours, at least 6 hours must be comprised of core subject matter; the remainder may be comprised of non-core subject matter.

(ii) An individual who receives initial enrollment between October 1, 1988 and December 31, 1989 is exempt from the continuing education requirement for the enrollment cycle ending December 31, 1989, but is required to file a timely application for renewal of enrollment effective April 1, 1990.

(2) *For renewed enrollment effective April 1, 1993 and every third year thereafter.* (i) A minimum of 36 hours of continuing education credit must be completed between January 1, 1990, and December 31, 1992, and between January 1 and December 31 for each three year period subsequent thereto. Each such three year period is known as an enrollment cycle. Of the 36 hours, at least 18 must be comprised of core subject matter; the remainder may be of a non-core nature.

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

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

(3) Enrolled actuaries whose enrollment status would have expired under previous regulations during the five year period from October 1, 1988, are not subject to compliance with such previous regulations addressing renewal of enrollment. Their enrollment status will not be adversely affected provided they comply with requirements on this part.

(f) *Qualifying continuing education—*

(1) *In general.* To qualify for continuing education credit consistent with the requirements of the above subsections, a course of learning must be a qualifying program comprised of core and/or non-core subject matter conducted by a qualifying sponsor.

(i) Core subject matter is program content designed to enhance the knowledge of an enrolled actuary with respect to matters directly related to the performance of pension actuarial services under ERISA or the Internal Revenue Code. Such core subject matter includes the characteristics of actuarial cost methods under ERISA, actuarial assumptions, minimum funding standards, title IV of ERISA, requirements with respect to the valuation of plan assets, requirements for qualification of pension plans, maximum deductible contributions, tax treatments of distributions from qualified pension plans, excise taxes related to the funding of qualified pension plans and standards of performance for actuarial services.

(ii) Non-core subject matter is program content designed to enhance the knowledge of an enrolled actuary in matters related to the performance of pension actuarial services. Examples include economics, computer programs, pension accounting, investment and finance, risk theory, communication skills and business and general tax law.

(iii) The Joint Board may publish other topics or approve other topics which may be included in a qualifying

program as core or non-core subject matter.

(iv) Repeated taking of the same course of study cannot be used to satisfy the continuing education requirements of the regulations. If the major content of a program or session differs substantively from a previous one bearing the same or similar title, it may be used to satisfy such requirements.

(2) *Qualifying Programs—*(i) *Formal programs.* Formal programs qualify as continuing education programs if they:

(A) Require attendance by at least three individuals engaged in substantive pension service in addition to the instructor, discussion leader or speaker;

(B) Require that the program be conducted by a qualified instructor, discussion leader or speaker, i.e. a person whose background, training, education and/or experience is appropriate for instructing or leading a discussion on the subject matter of the particular program; and

(C) Require a written outline and/or textbook and certificate of attendance provided by the sponsor, all of which must be retained by the enrolled actuary for a three year period following the end of the enrollment cycle.

(ii) *Correspondence or individual study programs (including audio and/or video taped programs).* Qualifying continuing education programs include correspondence or individual study programs completed on an individual basis by the enrolled actuary and conducted by qualifying sponsors. The allowable credit hours for such programs will be measured on a basis comparable to the measurement of a seminar or course for credit in an accredited educational institution. Such programs qualify as continuing education programs if they:

(A) Require registration of the participants by the sponsor;

(B) Provide a means for measuring completion by the participants (e.g., written examination); and

(C) Require a written outline and/or textbook and certificate of completion provided by the sponsor. Such certificate must be retained by the participant for a three year period following the end of an enrollment cycle.

(iii) *Teleconferencing.* Programs utilizing teleconferencing or other communications technologies qualify for continuing education purposes if they either:

(A) Meet all the requirements of formal programs, except that they may include a sign-on/sign-off capacity or similar technique in lieu of the physical attendance of participants; or

(B) Meet all the requirements of correspondence or individual study programs.

(iv) *Serving as an instructor, discussion leader or speaker.* (A) Four hours of continuing education credit will be awarded for each contact hour completed as an instructor, discussion leader or speaker at an educational program which meets the continuing education requirements of this section, in recognition of both presentation and preparation time.

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

(C) Presentation of the same material as an instructor, discussion leader or speaker more than one time in any 36 month period will not qualify for continuing education credit. A program will not be considered to consist of the same material if a substantial portion of the content has been revised to reflect changes in the law or in the state of the art relative to the performance of pension actuarial service.

(D) Credit as an instructor, discussion leader or speaker will not be awarded to panelists, moderators or others whose contribution does not constitute a substantial portion of the program. However, such individuals may be awarded credit for attendance, provided the other provisions of this section are met.

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

(v) *Credit for published articles, books, films, audio and video tapes, etc.* (A) Continuing education credit will be awarded for the creation of materials for publication or distribution with respect to matters directly related to the continuing professional education requirements of this section.

(B) The credit allowed will be on the basis of one hour credit 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.

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

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

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

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

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

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

(vii) *Preparation of Joint Board examinations.* Continuing educational 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 Board determines suitable. Such credit may not exceed 50% of the continuing professional education requirement for the applicable enrollment cycle.

(viii) *Society examinations.* 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 non-core.

(ix) *Pension law examination.* Individuals may establish eligibility for renewal of enrollment for any enrollment cycle by:

(A) Achieving a passing score on the pension law actuarial examination offered by the Joint Board and administered under this part during the applicable enrollment cycle; and

(B) Completing a minimum of 12 hours of qualifying continuing education in core subject matter during the same applicable enrollment cycle.

(C) This option of satisfying the continuing professional education requirements is not available to those who receive initial enrollment during the enrollment cycle.

(g) *Sponsors.* (1) Sponsors are those responsible for presenting programs.

(2) To qualify as a sponsor, a program presenter must:

(i) Be an accredited educational institution;

(ii) Be recognized for continuing education purposes by the licensing body of any State, possession, territory, Commonwealth, or the District of Columbia responsible for the issuance of a license in the field of actuarial science, insurance, accounting or law;

(iii) Be recognized by the Executive Director of the Joint Board as a professional organization or society whose programs include offering continuing professional education opportunities in subject matter within the scope of this section; or

(iv) File a sponsor agreement with the Executive Director of the Joint Board to obtain approval of the program as a qualifying continuing education program.

(3) Professional organizations or societies and others wishing to be considered as qualifying sponsors shall request such status of the Executive Director of the Joint Board and furnish information in support of the request together with any further information deemed necessary by the Executive Director.

(4) A qualifying sponsor must ensure the program complies with the following requirements:

(i) Programs must be developed by individual(s) qualified in the subject matter.

(ii) Program subject matter must be current.

(iii) Instructors, discussion leaders, and speakers must be qualified with respect to program content.

(iv) Programs must include some means for evaluation of technical content and presentation.

(v) Certificates of completion must be provided those who have successfully completed the program.

(vi) Records must be maintained by the sponsor to verify satisfaction of the requirements of this section. Such records must be retained for a period of three years following the end of the enrollment cycle in which the program is held. In the case of programs of more than one session, records must be maintained to verify completion of the program and attendance by each participant at each session of the program.

(5) Sponsor agreements and qualified professional organization or society sponsors approved by the Executive Director will remain in effect for one enrollment cycle. The names of such sponsors will be published on a periodic basis.

(h) *Measurement of continuing education course work.* (1) All continuing education programs will be measured in terms of credit hours. The shortest recognized program will be one credit hour.

(2) A credit hour is 50 minutes of continuous participation in a program. Each session in a program must be at least one full credit hour, i.e. 50 minutes. For example, a single-session program lasting 100 minutes will count as two credit hours, and a program comprised of three 75 minute sessions (225 minutes) constitutes four credit hours. However, at the end of an enrollment cycle, an individual may total the number of minutes of sessions of at least one credit hour in duration attended during the cycle and divide by fifty. For example, attending three 75 minute segments at two separate programs will accord an individual nine credit hours (450 minutes divided by 50) toward fulfilling the minimum number of continuing professional education hours. It will not be permissible to merge non-core hours with core hours. For university or college courses, each

“semester” hour credit will equal 15 credit hours and each “quarter” hour credit will equal 10 credit hours. Measurements of other formats of university or college courses will be handled on a comparable basis.

(i) *Record keeping requirements.* (1) Each individual applying for renewal shall retain for a period of three years following the end of an enrollment cycle the information required with regard to qualifying continuing professional education credit hours. Such information shall include:

- (i) The name of the sponsoring organization;
- (ii) The location of the program;
- (iii) The title of the program and description of its content, e.g., course syllabus and/or textbook;
- (iv) The dates attended;
- (v) The credit hours claimed and whether core or non-core subject matter;
- (vi) The name(s) of the instructor(s), discussion leader(s), or speaker(s), if appropriate;
- (vii) The certificate of completion and/or signed statement of the hours of attendance obtained from the sponsor; and
- (viii) The total core and non-core credit.

(2) To receive continuing education credit for service completed as an instructor, discussion leader, or speaker, the following information must be maintained for a period of three years following the end of the applicable enrollment cycle.

- (i) The name of the sponsoring organization;
- (ii) The location of the program;
- (iii) The title of the program and description of its content;
- (iv) The dates of the program; and
- (v) The credit hours claimed and whether core or non-core subject matter.

(3) To receive continuing education credit for a publication, the following information must be maintained for a period of three years following the end of the applicable enrollment cycle.

- (i) The publisher;
- (ii) The title of the publication;
- (iii) A copy of the publication;
- (iv) The date of publication;
- (v) The credit hours claimed;

(vi) Whether core or non-core subject matter; and

(vii) The availability and distribution of the publications to enrolled actuaries.

(j) *Waivers.* (1) Waiver from the continuing education requirements for a given period may be granted by the Executive Director of the Joint Board for the following reasons:

(i) Physical incapacity, which prevented compliance with the continuing education requirements;

(ii) Extended active military duty;

(iii) Absence from the individual's country of residence for an extended period of time due to employment or other reasons, provided the individual does not perform services as an enrolled actuary during such absence; and

(iv) Other compelling reasons, which will be considered on a case-by-case basis.

(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 of the Joint Board. Examples of appropriate documentation could be a medical certificate, military orders, etc.

(3) A request for waiver must be filed no later than the last day of the renewal application period.

(4) If a request for waiver is not approved, the individual will be so notified by the Executive Director of the Joint Board and placed on a roster of inactive enrolled individuals.

(5) If a request for waiver is approved, the individual will be so notified.

(6) Those who are granted waivers are required to file timely applications for renewal of enrollment.

(k) *Failure to comply.* (1) Compliance by an individual with the requirements of this part shall be determined by the Executive Director of the Joint Board. An individual who applies for renewal of enrollment but who fails to meet the requirements of eligibility for renewal will be notified by the Executive Director at his/her last known address by first class mail. The notice will state the basis for the non-compliance and will provide the individual an opportunity to furnish in writing, within 60



days of the date of the notice, information relating to the matter. Such information will be considered by the Executive Director in making a final determination as to eligibility for renewal of enrollment.

(2) The Executive Director of the Joint Board 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. The Executive Director may disallow any continuing professional education hours claimed if the individual concerned fails to comply with such requirements.

(3) An individual whose application for renewal is not approved may seek review of the matter by the Joint Board. 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 non-approved notice.

(4) An individual who has not filed a timely application for renewal of enrollment, who has not made a timely response to the notice of non-compliance with the renewal requirements, or who has not satisfied the requirements of eligibility for renewal will be placed on a roster of inactive enrolled actuaries for a period of three years from the date renewal would have been effective. During this time, the individual will be ineligible to perform services as an enrolled actuary and to practice before the Internal Revenue Service.

(5) During inactive enrollment status or at any other time an individual is ineligible to perform services as an enrolled actuary and to practice before the Internal Revenue Service, 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 services as an enrolled actuary.

(6) An individual placed in an inactive status must file an application for renewal of enrollment and satisfy the requirements for renewal as set forth in this section within three years from the date renewal would have been effective. The name of such individual

otherwise will be removed from the inactive enrollment roster and his/her enrollment will terminate. Eligibility for enrollment must then be reestablished by the individual as provided in this part.

(7) An individual placed in an inactive status may satisfy the requirements for renewal of enrollment at any time during his/her period of inactive enrollment. If such satisfaction includes completing the continuing education requirement, the application for renewal may be filed immediately upon such completion. Continuing education credit under this subsection may not be used to satisfy the requirements of the enrollment cycle in which the individual has been placed back on the active roster.

(8) An individual in inactive status remains subject to the jurisdiction of the Joint Board and/or the Department of the Treasury with respect to disciplinary matters.

(9) An individual who is in good faith has certified 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 being found inadequate or not in compliance with the requirements for renewal. Such individual will be granted renewal, but the Executive Director may require such individual to remedy the resulting shortfall by earning replacement credit during the cycle in which renewal was granted or within a reasonable time period as determined by the Executive Director. For example, if six of the credit hours claimed were disallowed, the individual may be required to present 42 credit hours instead of the minimum 36 credit hours to qualify for renewal related to the next cycle.

(1) *Inactive retirement status.* An individual who no longer performs services as an enrolled actuary may request placement in an inactive retirement status at any time and such individual will be placed in such status. The individual will be ineligible to perform services as an enrolled actuary. Such individual must file a timely application for renewal of enrollment at each applicable renewal cycle as provided in

this part. An individual who is placed in an inactive retirement status may be reinstated to active enrollment status upon filing an application for renewal of enrollment and providing evidence of the completion of the required continuing professional education hours for the applicable enrollment cycle. An individual in inactive retirement status remains subject to the jurisdiction of the Joint Board and/or the Department of the Treasury with respect to disciplinary matters.

(m) *Renewal while under suspension or disbarment.* An individual who is ineligible to perform actuarial services and/or to practice before the Internal Revenue Service by virtue of disciplinary action is required to meet the requirements for renewal of enrollment during the period of such ineligibility.

(n) *Verification.* The Executive Director of the Joint Board or his/her designee may review the continuing education records of an enrolled actuary and/or qualified sponsor, including attending programs, in a manner deemed appropriate to determine compliance with the requirements and standards for the renewal of enrollment as provided in this section.

[42 FR 39200, Aug. 3, 1977, as amended at 53 FR 34484, Sept. 7, 1988]

**§ 901.12 Eligibility for enrollment of individuals applying for enrollment before January 1, 1976.**

(a) *In general.* An individual applying before January 1, 1976, to be an enrolled actuary must fulfill the experience requirements of paragraph (b) of this section and either the examination requirements of paragraph (c) of this section or the educational requirements of paragraph (d) of this section.

(b) *Qualifying experience.* Within a 15 year period immediately preceding the date of application, the applicant shall have completed either:

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

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

(c) *Examination requirement.* The applicant shall satisfactorily complete the Joint Board examination require-

ment of paragraph (c)(1) of this section or the organization examination requirement of paragraph (c)(2) of this section.

(1) *Joint Board examination.* To satisfy the Joint Board examination requirement, the applicant shall have completed, to the satisfaction of the Joint Board, an examination prescribed by the Joint Board in actuarial mathematics and methodology related to pension plans, including the funding requirements of ERISA.

(2) *Organization examination.* (i) To satisfy the organization examination requirement, the applicant shall, before March 1, 1975, have attained by proctored examination one of the following classes of qualification in one of the following organizations:

(A) Member of the American Academy of Actuaries,

(B) Fellow or Member of the American Society of Pension Actuaries,

(C) Fellow or Associate of the Casualty Actuarial Society,

(D) Fellow or Member of the Conference of Actuaries in Public Practice,

(E) Fellow or Associate of the Society of Actuaries, or

(F) A class attained by proctored examination in any other actuarial organization in the United States or elsewhere if the Joint Board determines that the subject matter included in such examination, complexity of questions, and the minimum acceptable qualifying score are at least comparable to proctored examinations administered by any of the above organizations before March 1, 1975; or

(ii) On or after March 1, 1975, the applicant shall have attained one of the classes of qualification specified in paragraph (c)(2)(i) of this section, the attainment of such qualification having been by proctored examination under requirements determined by the Joint Board to be of not lower standards than the requirements for qualification during the 12 months immediately preceding March 1, 1975.

(d) *Qualifying formal education.* Prior to filing an application, the applicant shall have satisfied one of the following educational requirements:

(1) Received a bachelor's or higher degree from an accredited college or university, such degree having been

granted after the satisfactory completion of a course of study in which the major area of concentration was actuarial science, or

(2) Received a bachelor's or higher degree from an accredited college or university, such degree having been granted after the satisfactory completion of a course of study in which the major area of concentration was mathematics, statistics, or computer science, and shall have successfully completed at least 6 semester hours or 9 quarter hours of courses in life contingencies at an accredited college or university.

(e) *Disreputable conduct.* The applicant may be denied enrollment if it is found that he/she, after his/her eighteenth birthday, has:

(1) Engaged in any conduct evidencing fraud, dishonesty or breach of trust; or

(2) Been convicted of any of the offenses referred to in section 411 of ERISA; or

(3) Submitted false or misleading information on an application for enrollment to perform actuarial services or in any oral or written information submitted in connection therewith or in any report presenting actuarial information to any person, knowing the same to be false or misleading.

**§ 901.13 Eligibility for enrollment of individuals applying for enrollment on or after January 1, 1976.**

(a) *In general.* An individual applying on or after January 1, 1976, 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 a 10 year period immediately preceding the date of application, the applicant shall have completed either:

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

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

(c) *Basic actuarial knowledge.* The applicant shall demonstrate knowledge of basic actuarial mathematics and methodology by one of the following:

(1) *Joint Board basic examination.* Successful completion, to a score satisfactory to the Joint Board, of an examination, prescribed by the Joint Board, in basic actuarial mathematics and methodology including compound interest, principles of life contingencies, commutation functions, multiple-decrement functions, and joint life annuities.

(2) *Organization basic examinations.* Successful completion, 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 basic examination referred to in paragraph (c)(1) of this section.

(3) *Qualifying formal education.* Receipt of a bachelor's or higher degree from an accredited college or university after the satisfactory completion of a course of study:

(i) In which the major area of concentration was actuarial mathematics, or

(ii) Which included at least as many semester hours or quarter hours each in mathematics, statistics, actuarial mathematics and other subjects as the Board determines represent equivalence to paragraph (c)(3)(i) of this section.

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

(1) *Joint Board pension examination.* Successful completion, 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.

(2) *Organization pension examinations.* Successful completion, 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) of this section.

(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 a check or money order in the amount set forth on the application form, payable to the Treasury of the United States. The amount represents a fee charged to each applicant for examination and is designed to cover the costs assessed the Joint Board for the administration of the examination. The fee shall be retained by the United States whether or not the applicant successfully completes the examination or is enrolled.

(f) *Denial of enrollment.* An applicant may be denied enrollment if:

(1) The Joint Board finds that the applicant, during the 15-year period immediately preceding the date of application and on or after the applicant's eighteenth birthday has engaged in disreputable conduct. The term disreputable conduct includes, but is not limited to:

(i) An adjudication, decision, or determination by a court of law, a duly constituted licensing or accreditation authority (other than the Joint Board), or by any federal or state agency, board, commission, hearing examiner, administrative law judge, or other official administrative authority, that the applicant has engaged in conduct evidencing fraud, dishonesty or breach of trust.

(ii) Giving false or misleading information, or participating in any way in the giving of false or misleading information, to the Department of the Treasury or the Department of Labor or the Pension Benefit Guaranty Corporation or any officer or employee thereof in connection with any matter pending or likely to be pending before them, knowing such information to be false or misleading.

(iii) Willfully failing to make a Federal tax return in violation of the revenue laws of the United States, or evading, attempting to evade, or participating in any way in evading or attempting to evade any federal tax or payment thereof, knowingly counseling or suggesting to a client or prospective client an illegal plan to evade federal taxes or payment thereof, or concealing assets of himself or another to evade federal taxes or payment thereof.

(iv) Directly or indirectly attempting to influence, or offering or agreeing to attempt to influence, the official action of any officer or employee of the Department of the Treasury or the Department of Labor or the Pension Benefit Guaranty Corporation by the use of threats, false accusations, duress or coercion, by the offer of any special inducement or promise of advantage or by the bestowing of any gift, favor, or thing of value.

(v) Disbarment or suspension from practice as an actuary, attorney, certified public accountant, public accountant, or an enrolled agent by any duly constituted authority of any state, possession, territory, Commonwealth, the District of Columbia, by any Federal Court of record, or by the Department of the Treasury.

(vi) Contemptuous conduct in connection with matters before the Department of the Treasury, or the Department of Labor, or the Pension Benefit Guaranty Corporation including the use of abusive language, making false accusations and statements knowing them to be false, or circulating or publishing malicious or libelous matter.

(2) The applicant has been convicted of any of the offenses referred to in section 411 of ERISA.

(3) The applicant has submitted false or misleading information on an application for enrollment to perform actuarial services or in any oral or written information submitted in connection therewith or in any report presenting actuarial information to any person, knowing the same to be false or misleading.

(Sec. 3042, subtitle C, title 3, Employee Retirement Income Security Act of 1974 (88 Stat. 1002, 29 U.S.C. 1241, 1242), and the Act of

## Joint Board for the Enrollment of Actuaries

## § 901.30

August 31, 1951, ch. 376, title V, section 501, 65 Stat. 290, 31 U.S.C. 483a)

[44 FR 11751, Mar. 2, 1979, as amended at 44 FR 68458, Nov. 29, 1979]

### Subpart C—Standards of Performance for Enrolled Actuaries

#### § 901.20 Standards of performance of actuarial services.

In the discharge of duties required by ERISA of enrolled actuaries with respect to any plan to which the Act applies:

(a) *In general.* An enrolled actuary shall undertake an actuarial assignment only when qualified to do so.

(b) *Professional duty.* An enrolled actuary shall not perform actuarial services for any person or organization which he/she believes or has reasonable grounds for believing may utilize his/her services in a fraudulent manner or in a manner inconsistent with law.

(c) *Advice or explanations.* An enrolled actuary shall provide to the plan administrator upon appropriate request, supplemental advice or explanation relative to any report signed or certified by such enrolled actuary.

(d) *Conflicts of interest.* In any situation in which the enrolled actuary has a conflict of interest with respect to the performance of actuarial services, of which the enrolled actuary has knowledge, he/she shall not perform such actuarial services except after full disclosure has been made to the plan trustees, any named fiduciary of the plan, the plan administrator, and, if the plan is subject to a collective bargaining agreement, the collective bargaining representative.

(e) *Assumptions, calculations and recommendations.* The enrolled actuary shall exercise due care, skill, prudence and diligence to ensure that:

(1) The actuarial assumptions are reasonable in the aggregate, and the actuarial cost method and the actuarial method of valuation of assets are appropriate,

(2) The calculations are accurately carried out, and

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

(f) *Report or certificate.* 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.

(g) *Utilization of enrolled actuary designation.* An enrolled actuary shall not advertise his/her status as an enrolled actuary in any solicitation related to the performance of actuarial services, and shall not employ, accept employment in partnership, corporate, or any other form, or share fees with, any individual or entity who so solicits. However, the use of the term "enrolled actuary" to identify an individual who is named on the stationery, letterhead or business card of an enrolled actuary, or of a partnership, association, or corporation shall not be considered in violation of this section. In addition, the term "enrolled actuary" may appear after the general listing of an enrolled actuary's name in a telephone directory provided such listing is not of a distinctive nature.

(h) *Notification.* An enrolled actuary shall provide written notification of the non-filing of any actuarial document he/she has signed upon discovery of the non-filing. Such notification shall be made to the office of the Internal Revenue Service, the Department of Labor, or the Pension Benefit Guaranty Corporation where such document should have been filed.

[40 FR 18776, Apr. 30, 1975, as amended at 43 FR 39757, Sept. 7, 1978]

### Subpart D—Suspension or Termination of Enrollment

AUTHORITY: Sec. 3042(b), ERISA, 29 U.S.C. 1242(b).

SOURCE: 43 FR 39757, Sept. 7, 1978, unless otherwise noted.

#### § 901.30 Authority to suspend or terminate enrollment.

Under section 3042(b) of ERISA the Joint Board may, after notice and opportunity for a hearing, suspend or terminate the enrollment of an enrolled

### § 901.31

actuary if the Joint Board finds that such enrolled actuary

(a) Has failed to discharge his/her duties under ERISA, or

(b) Does not satisfy the requirements for enrollment in effect at the time of his/her enrollment.

### § 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 §§ 901.12 or 901.13, whichever is applicable.

(b) *Failure to discharge duties.* The enrollment of an actuary may be suspended or terminated if it is found that the actuary, following enrollment, failed to discharge his/her duties under ERISA. Such duties include those set forth in § 901.20.

(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 § 901.13(e)(1)(i)-(vi) or other conduct evidencing fraud, dishonesty, or breach of trust. Such other conduct includes, but is not limited to, the following:

(1) Conviction of any criminal offense under the laws of the United States (including section 411 of ERISA, 29 U.S.C. 1111), any State thereof, the District of Columbia, or any territory or possession of the United States, which evidences fraud, dishonesty, or breach of trust.

(2) Knowingly filing false or altered documents, affidavits, financial statements or other papers on matters relating to employee benefit plans or actuarial services.

(3) Knowingly making false or misleading representations, either orally or in writing, on matters relating to employee benefit plans or actuarial services, or knowingly failing to disclose information relative to such matters.

(4) The use of false or misleading representations with intent to deceive a client or prospective client, or of intimations that the actuary is able to obtain special consideration or action

### 20 CFR Ch. VIII (4-1-00 Edition)

from an officer or employee of any agency or court authorized to determine the validity of pension plans under ERISA.

(5) Willful violation of any of the regulations contained in this part.

### § 901.32 Receipt of information concerning enrolled actuaries.

If an officer or employee of the Department of the 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 this part, or if any such officer, employee or member receives information to that effect, he/she may make a written report thereof, which report or a copy thereof shall be forwarded to the Executive Director. If any other person has information of any such violation, he/she may make a report thereof to the Executive Director or to any officer or employee of the Department of the Treasury, the Department of Labor, or to the Pension Benefit Guaranty Corporation.

### § 901.33 Initiation of proceeding.

Whenever the Executive Director has reason to believe that an enrolled actuary has violated any provision of the laws or regulations governing enrollment, such individual may be reprimanded or a proceeding may be initiated for the suspension or termination of such individual's enrollment. A reprimand as used in this paragraph is a statement informing the enrolled actuary that, in the opinion of the Executive Director, his/her conduct is in violation of the regulations and admonishing the enrolled actuary that repetition of the conduct occasioning the reprimand may result in the institution of a proceeding for the suspension or termination of the actuary's enrollment. A proceeding for suspension or termination of enrollment shall be initiated by a complaint naming the respondent actuary, signed by the Executive Director and filed in the Executive Director's office. Except in cases where the nature of the proceeding or the public interest does not permit, a proceeding will not be initiated under this section until the facts which may warrant such a proceeding have been called

to the attention of the actuary in writing and he/she has been given an opportunity to respond to the allegations of misconduct.

**§ 901.34 Conferences.**

(a) *In general.* The Executive Director may confer with an enrolled actuary concerning allegations of his/her misconduct whether or not a proceeding for suspension or termination has been initiated against him/her. If the conference results in agreement as to certain facts or other matters in connection with such a proceeding, such agreement may be entered in the record at the request of the actuary or the Executive Director.

(b) *Voluntary suspension or termination of enrollment.* An enrolled actuary, in order to avoid the initiation or conclusion of a suspension or termination proceeding, may offer his/her consent to suspension or termination of enrollment or may offer his/her resignation. The Executive Director may accept the offered resignation or may suspend or terminate enrollment in accordance with the consent offered.

**§ 901.35 Contents of complaint.**

(a) *Charges.* A complaint initiating a suspension or termination proceeding shall describe the allegations which are the basis for the proceeding, and fairly inform the respondent of the charges against him/her.

(b) *Answer.* In the complaint, or in a separate paper attached to the complaint, notice shall be given of the place at, and time within which the respondent shall file an answer, which time shall not be less than 15 days from the date of service of the complaint. Notice shall be given that a decision by default may be rendered against the respondent if an answer is not filed as required.

**§ 901.36 Service of complaint and other papers.**

(a) *Complaint.* The complaint or a copy thereof may be served upon the respondent by certified mail, or first-class mail as hereinafter provided, by delivering it to the respondent, or the respondent's attorney or agent of record either in person or by leaving it at the office or place of business of the

respondent, the attorney or agent, or in any other manner which may have been agreed to in writing by the respondent. Where the service is by certified mail, the return post office receipt signed by or on behalf of the respondent shall be proof of service. If the certified matter is not claimed or accepted by the respondent and is returned undelivered, complete service may be made upon the respondent by mailing the complaint to him/her by first-class mail, addressed to the respondent at the last address known to the Executive Director. If service is made upon the respondent or his/her attorney or agent in person or by leaving the complaint at the office or place of business of the respondent, attorney, or agent, the verified return by the person making service, setting forth the manner of service, shall be proof of such service.

(b) *Service of papers other than complaint.* Any paper other than the complaint may be served upon the respondent as provided in paragraph (a) of this section or by mailing the paper by first-class mail to the respondent at the last address known to the Executive Director or by mailing the paper by first-class mail to the respondent's attorney or agent. Such mailing shall constitute complete service. Notices may also be served upon the respondent or his/her attorney or agent by telegraph.

(c) *Filing of papers.* Whenever the filing of a paper is required or permitted in connection with a suspension or termination proceeding, and the place of filing is not specified by this subpart or by rule or order of the Administrative Law Judge, the paper shall be filed with the Executive Director of the Joint Board for the Enrollment of Actuaries, Treasury Department, Washington, D.C. 20220. All papers shall be filed in duplicate.

**§ 901.37 Answer.**

(a) *Filing.* The respondent's answer shall be filed in writing within the time specified in the complaint or notice of initiation of the proceeding, unless, on application, the time is extended by the Executive Director or

### § 901.38

the Administrative Law Judge. The answer shall be filed in duplicate with the Executive Director.

(b) *Contents.* The answer shall contain a statement of facts which constitute the grounds of defense and it shall specifically admit or deny each allegation set forth in the complaint, except that the respondent shall not deny a material allegation in the complaint which he/she knows to be true, or state that he/she is without sufficient information to form a belief when in fact the respondent possesses such information. The respondent may also state affirmatively special matters of defense.

(c) *Failure to deny or answer allegations in the complaint.* Every allegation in the complaint which is not denied in the answer shall be deemed to be admitted and may be considered as proven, and no further evidence in respect of such allegation need be adduced at a hearing. Failure to file an answer within the time prescribed in the notice to the respondent, except as the time for answer is extended by the Executive Director or the Administrative Law Judge, shall constitute an admission of the allegations of the complaint and a waiver of hearing, and the Administrative Law Judge may make a decision by default, without a hearing or further procedure.

### § 901.38 Supplemental charges.

If it appears to the Executive Director that the respondent in his/her answer falsely and in bad faith denies a material allegation of fact in the complaint or states that the respondent has no knowledge sufficient to form a belief when he/she in fact possesses such knowledge, or if it appears that the respondent has knowingly introduced false testimony during proceedings for suspension or termination of his/her enrollment, the Executive Director may file supplemental charges against the respondent. Such supplemental charges may be tried with other charges in the case, provided the respondent is given due notice thereof and is afforded an opportunity to prepare a defense thereto.

### 20 CFR Ch. VIII (4-1-00 Edition)

### § 901.39 Reply to answer.

No reply to the respondent's answer shall be required, but the Executive Director may file a reply at his/her discretion or at the request of the Administrative Law Judge.

### § 901.40 Proof; variance; amendment of pleadings.

In the case of a variance between the allegations in a pleading and the evidence adduced in support of the pleading, the Administrative Law Judge may order or authorize amendment of the pleading to conform to the evidence, provided that the party who would otherwise be prejudiced by the amendment is given reasonable opportunity to meet the allegations of the pleading as amended. The Administrative Law Judge shall make findings on any issue presented by the pleadings as so amended.

### § 901.41 Motions and requests.

Motions and requests may be filed with the Executive Director or with the Administrative Law Judge.

### § 901.42 Representation.

A respondent or proposed respondent may appear at conference or hearing in person or may be represented by counsel or other representative. The Executive Director may be represented by an attorney or other employee of the Treasury Department.

### § 901.43 Administrative Law Judge.

(a) *Appointment.* An administrative law judge, appointed as provided by section 11 of the Administrative Procedure Act, 60 Stat. 244 (5 U.S.C. 3105), shall conduct proceedings upon complaints for the suspension or termination of enrolled actuaries.

(b) *Powers of Administrative Law Judge.* Among other powers, the Administrative Law Judge shall have authority, in connection with any suspension or termination proceeding of an enrolled actuary, to do the following:

(1) Administer oaths and affirmations;

(2) Make rulings upon motions and requests, which may not be appealed before the close of a hearing except at



## Joint Board for the Enrollment of Actuaries

## § 901.46

the discretion of the Administrative Law Judge;

(3) Determine the time and place of hearing and regulate its course of conduct;

(4) Adopt rules of procedure and modify the same as required for the orderly disposition of proceedings;

(5) Rule upon offers of proof, receive relevant evidence, and examine witnesses;

(6) Take or authorize the taking of depositions;

(7) Receive and consider oral or written argument on facts or law;

(8) Hold or provide for the holding of conferences for the settlement or simplification of the issues by consent of the parties;

(9) Perform such acts and take such measures as are necessary or appropriate to the efficient conduct of any proceeding; and

(10) Make initial decisions.

### § 901.44 Hearings.

(a) *In general.* The Administrative Law Judge shall preside at the hearing on a complaint for the suspension or termination of an enrolled actuary. Hearings shall be stenographically recorded and transcribed and the testimony of witnesses shall be taken under oath or affirmation. Hearings will be conducted pursuant to section 7 of the Administrative Procedure Act, 60 Stat. 241 (5 U.S.C. 556).

(b) *Failure to appear.* If either party to the proceeding fails to appear at the hearing, after due notice thereof has been sent to the parties, the Administrative Law Judge may make a decision against the absent party by default.

### § 901.45 Evidence.

(a) *In general.* The rules of evidence prevailing in courts of law and equity are not controlling in hearings on complaints for the suspension or the termination of the enrollment of enrolled actuaries. However, the Administrative Law Judge shall exclude evidence which is irrelevant, immaterial, or unduly repetitious.

(b) *Depositions.* The deposition of any witness taken pursuant to § 901.46 may be admitted.

(c) *Proof of documents.* Official documents, records, and papers of the Department of the Treasury, the Department of Labor, the Pension Benefit Guaranty Corporation, the Joint Board for the Enrollment of Actuaries or the Office of the Executive Director of the Joint Board for the Enrollment of Actuaries shall be admissible into evidence without the production of an officer or employee to authenticate them. Any such documents, records, and papers may be evidenced by a copy attested to or identified by an officer or employee of the Department of the Treasury, the Department of Labor, the Pension Benefit Guaranty Corporation, the Joint Board for the Enrollment of Actuaries, or the Office of the Executive Director of the Joint Board for the Enrollment of Actuaries, as the case may be.

(d) *Exhibits.* If any document, record, or other paper is introduced into evidence as an exhibit, the Administrative Law Judge may authorize the withdrawal of the exhibit subject to any conditions which he/she deems proper.

(e) *Objections.* Objections to evidence shall state the grounds relied upon, and the record shall not include argument thereon, except as ordered by the Administrative Law Judge. Rulings on such objections shall be part of the record. No exception to the ruling is necessary to preserve the rights of the parties.

### § 901.46 Depositions.

Depositions for use at a hearing may, with the written approval of the Administrative Law Judge, be taken by either the Executive Director or the respondent or their duly authorized representatives. Depositions may be taken upon oral or written interrogatories, upon not less than 10 days written notice to the other party, before any officer duly authorized to administer an oath for general purposes or before an officer or employee of the Department of the Treasury, the Department of Labor, the Pension Benefit Guaranty Corporation, or the Joint Board who is authorized to administer an oath. Such notice shall state the names of the witnesses and the time and place where the depositions are to be taken. The requirement of 10 days notice may be

**§ 901.47**

waived by the parties in writing, and depositions may then be taken from the persons and at the times and places mutually agreed upon by the parties. When a deposition is taken upon written interrogatories, any cross-examination shall be upon written interrogatories. Copies of such written interrogatories shall be served upon the other party with the notice, and the copies of any written cross-interrogatories shall be mailed or delivered to the opposing party at least five days before the date of taking the depositions, unless the parties mutually agree otherwise. A party upon whose behalf a deposition is taken must file it with the Administrative Law Judge and serve one copy upon the opposing party. Expenses in the reporting of depositions shall be borne by the party at whose instance the deposition is taken.

**§ 901.47 Transcript.**

In cases where the hearing is stenographically reported by a Government contract reporter, copies of the transcript may be obtained from the reporter at rates not to exceed the maximum rates fixed by contract between the Government and the reporter. Where the hearing is stenographically reported by a regular employee of the Department of the Treasury, the Department of Labor, the Pension Benefit Guaranty Corporation, or the Joint Board, a copy thereof will be supplied to the respondent either without charge or upon the payment of a reasonable fee. 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. 483a).

**§ 901.48 Proposed findings and conclusions.**

Except in cases where the respondent has failed to answer the complaint or where a party has failed to appear at the hearing, the Administrative Law Judge, before making his/her decision, shall give the parties a reasonable opportunity to submit proposed findings and conclusions and supporting reasons therefor.

**20 CFR Ch. VIII (4-1-00 Edition)**

**§ 901.49 Decision of the Administrative Law Judge.**

As soon as practicable after the conclusion of a hearing and the receipt of any proposed findings and conclusions timely submitted by the parties, the Administrative Law Judge shall make the initial decision in the case. The decision should be based solely upon the pleading, the testimony and exhibits received in evidence at the hearing or specifically authorized to be subsequently submitted under the applicable laws and regulations. The decision shall include (a) a statement of findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact or law presented on the record, and (b) an order of suspension, termination or reprimand or an order of dismissal of the complaint. The Administrative Law Judge shall file the decision with the Executive Director and shall transmit a copy thereof to the respondent or his/her attorney or agent of record. In the absence of an appeal to the Joint Board or review of the decision upon motion of the Joint Board, the decision of the Administrative Law Judge shall without further proceedings become the decision of the Joint Board 30 days from the date of the Administrative Law Judge's decision.

**§ 901.50 Appeal to the Joint Board.**

Within 30 days from the date of the Administrative Law Judge's decision, either party may appeal to the Joint Board for the Enrollment of Actuaries. The appeal shall be filed with the Executive Director in duplicate and shall include exceptions to the decision of the Administrative Law Judge and supporting reasons for such exceptions. If an appeal is filed by the Executive Director, a copy thereof shall be transmitted to the respondent. Within 30 days after receipt of an appeal or copy thereof, the other party may file a reply brief in duplicate with the Executive Director. If the reply brief is filed by the Executive Director, a copy of it shall be transmitted to the respondent. Upon the filing of an appeal and a reply brief, if any, the Executive Director shall transmit the entire record to the joint board.

**§ 901.51 Decision of the Joint Board.**

On appeal from or review of the initial decision of the Administrative Law Judge, the Joint Board for the Enrollment of Actuaries will make the final decision. In making its decision the Joint Board will review the record of such portions thereof as may be cited by the parties to permit limiting of the issues. A copy of the Joint Board's decision shall be transmitted to the respondent by the Executive Director.

**§ 901.52 Effect of suspension, termination or resignation of enrollment; surrender of enrollment certificate.**

If the respondent's enrollment is suspended, the respondent shall not thereafter be permitted to perform actuarial services under ERISA during the period of suspension. If the respondent's enrollment is terminated, the respondent shall not thereafter be permitted to perform actuarial services under ERISA unless and until authorized to do so by the Executive Director pursuant to § 901.54. The respondent shall surrender his/her enrollment certificate to the Executive Director for cancellation in the case of a termination or resignation of enrollment or for retention during a period of suspension.

**§ 901.53 Notice of suspension, termination or resignation of enrollment.**

Upon the resignation or the issuance of a final order suspending or terminating the enrollment of an actuary, the Executive Director shall give notice thereof to appropriate officers and employees of the Department of the Treasury, the Department of Labor, the Pension Benefit Guaranty Corporation, and to other interested departments and agencies of the Federal Government.

**§ 901.54 Petition for reinstatement.**

Any individual whose enrollment has been terminated may petition the Executive Director for reinstatement after the expiration of five years following such termination. Reinstatement may not be granted unless the Executive Director, with the approval of the Joint Board, is satisfied that the petitioner is not likely to conduct himself/herself thereafter contrary to the regulations in this part, and that

granting such reinstatement would not be contrary to the public interest.

**Subpart E—General Provisions**

AUTHORITY: Sec. 3042(b), ERISA, 29 U.S.C. 1242(b).

SOURCE: 43 FR 39761, Sept. 7, 1978, unless otherwise noted.

**§ 901.70 Records.**

(a) *Availability.* There are made available for public inspection at the Office of the Executive Director of the Joint Board for the Enrollment of Actuaries a roster of all persons enrolled to perform actuarial services under ERISA and a roster of all persons whose enrollments to perform such services have been suspended or terminated. Other records may be disclosed upon specific request, in accordance with the applicable disclosure and privacy statutes.

(b) *Disciplinary procedures.* A request by an enrolled actuary that a hearing in a disciplinary proceeding concerning him/her be public, and that the record thereof be made available for inspection by interested persons may be granted if written agreement is reached in advance to protect from disclosure tax information which is confidential, in accordance with applicable statutes and regulations.

**§ 901.71 Special orders.**

The Joint Board reserves the power to issue such special orders as it may deem proper in any case within the purview of this part.

**PART 902—RULES REGARDING AVAILABILITY OF INFORMATION**

Sec.

- 902.1 Scope.
- 902.2 Definitions.
- 902.3 Published information.
- 902.4 Access to records.
- 902.5 Appeal.

AUTHORITY: Sec. 3042, subtitle C, title 3, Employee Retirement Income Security Act of 1974 (88 Stat. 1002, 29 U.S.C. 1241, 1242).

SOURCE: 42 FR 39204, Aug. 3, 1977, unless otherwise noted.