

Joint Board Regulations - FAQ

I. QUESTIONS RELATED TO QUALIFYING PROGRAMS FOR CONTINUING EDUCATION CREDIT

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

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

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

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

Examples of sessions that could count toward the ethics CPE requirement include sessions dealing with ethical dilemmas, general business ethics, and standards of performance under Circular 230 (but not discussions of qualification requirements, including PTIN requirements).

Q I-2. The previous regulations included a requirement that a qualifying program have at least 3 persons engaged in “substantive pension service” in attendance, along with an instructor qualified in the subject matter. The current regulations do not include this requirement in the general description of a qualifying program. Does this mean that an enrolled actuary may receive credit for participating in a session if no others are present?

A I-2. The general rules for a qualifying program are intended to replace not only the typical continuing education sessions but also the self-study option under the prior regulations. As such, as long as the qualifying program sponsor is satisfied that they can verify attendance/completion of the program, the sponsor can issue a certificate of attendance. The presence of other pension professionals is required, however, for credit as a formal program.

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

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

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

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

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

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

If the person or group in charge of coordinating the program for a given location is a qualifying program sponsor and if that person or group is willing to take responsibility for the recordkeeping, content, verification of attendance, etc., as the program sponsor for that session at that location, then the certificates can be issued locally as opposed to being issued by the sponsor of the webcast or audiocast itself. However, if the local group is not a qualifying program sponsor, any certificates would have to be issued by the qualifying program sponsor in charge of the audiocast or webcast.

Note that if at least three persons engaged in “substantive pension service” physically attended the session at that location, have access to the instructor for the session for questions, and the session otherwise meets the requirements for a formal program, the program qualifies as a formal program for participants at the location, even if the instructor is at another location.

Q II-2. How can the qualifying sponsor of a webcast or other distance-learning session verify attendance at remote locations? In particular, how can the

sponsor verify that at least three persons engaged in substantive pension service attended the program in the same physical location, so that the sponsor can issue a certificate showing formal credit?

A II-2. Qualifying program sponsors are responsible for verifying attendance, and must take reasonable steps to satisfy themselves that an individual completed the program and (if applicable) qualifies for formal credit. For example, the qualifying program sponsor could verify attendance by checking telephone or computer logs to verify that an individual was connected to the session for the entire time, could periodically require a response from attendees to ensure that they are listening to the session, or implement some other reasonable method for verifying attendance. For formal credit, many organizations use sign-up sheets at the remote locations, and identify a responsible person who is accountable for making sure that anyone who signed the sheet was in attendance for the entire session.

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

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

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

Q II-4. The Joint Board regulations specify information that must be reported on continuing education certificates, including the "location of the program" (see section 901.11(f)(2)(iv)(C)). For a program attended by participants in many different locations, is it necessary to report the location for each individual on his or her certificate?

A II-4. The Joint Board intends to use the location information when verifying that the program meets the requirements for formal program credit with respect to the

individual. However, the Joint Board recognizes that entering the information on individual certificates of completion can be burdensome. Therefore, the Joint Board will accept certificates that state that the location is on file, as long as the qualifying program sponsor maintains records showing the location where each individual attended the program (such as original sign-in sheets) and produces those records upon the request of the Joint Board.

Q II-5. Under the final regulations, certificates of attendance and instruction must indicate whether the program qualifies as a formal program or if the session is eligible for ethics credits. Certificates issued after January 1, 2011, but before the effective date of the new regulations would not include that information -- are qualifying sponsors required to reissue these certificates?

A II-5. Continuing education credits earned prior to the effective date of the new regulations are subject to the prior regulations in effect at that time, so qualifying sponsors are not required to reissue certificates issued before the date of the new regulations. However, the sponsor may wish to reissue the certificates if the session would have qualified for ethics credits or formal credit and it is not clear from the face of the certificate that the session would qualify for these credits. For instance, if the session was held at an established conference, and the only way for an individual to receive credit for that session was to attend the session in the same physical location with the instructor and at least two other participants engaged in substantive pension service, then the Joint Board is unlikely to challenge participants who claim formal credit for that session even if the certificate of completion does not specify that the program was a formal program with respect to that individual.

On the other hand, it may not be clear from the title of a program whether that session would qualify for ethics credits under the Joint Board regulations. If continuing education certificates were issued for these sessions without specifying that the session was intended to qualify for Joint Board ethics credits, the qualifying program sponsor may wish to issue a new certificate to avoid possible questions if the individual's credits are audited by the Joint Board. In addition, a participant should confirm with the qualifying program sponsor before claiming the session as an ethics credit.

III. QUESTIONS RELATED TO CONTINUING PROFESSIONAL EDUCATION CREDITS

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

A III-1. Yes. For example, if a 50-minute session consists of 25 minutes of discussion on topics that would qualify for ethics credit under the Joint Board regulations and 25 minutes covering non-core topics, attendees can receive ½ hour of ethics credit and ½ hour of noncore credit. The Joint Board has not set a minimum number of minutes for credit for a topic within a session, but notes that a topic cannot be meaningfully covered in a very short time period. Accordingly, the Joint Board will expect qualifying program sponsors to be reasonable when splitting a session into different types of continuing education credits, and will review any such allocation upon audit based on facts and circumstances.

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

A III-2. Yes. The instructor may claim the credit for actual time spent attending a qualifying program as long as he/she meets the requirements that would apply to anyone attending the session (including restrictions on credits for sessions repeating the same material for which the individual has already claimed credit).

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

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

IV. QUESTIONS RELATED TO INITIAL ENROLLMENT

Q IV-1. Is it permissible to file an application for enrollment using the old Form 5434 published before the effective date of the new regulations?

A IV-1. Applicants should use the current form found on the Joint Board website at <http://www.irs.gov/taxpros/actuaries/article/0,,id=97441,00.html>. The Joint Board

accepted applications filed using the previous version of Form 5434 for a short period of time after the effective date of the new regulations, but those applicants are required to meet the requirements for enrollment under the new regulations regardless of which form is filed. In particular, if the applicant's supervisor is not an enrolled actuary, the applicant must provide both the name of his/her supervisor and an enrolled actuary to certify his/her experience.

V. QUESTIONS RELATED TO STANDARDS OF PERFORMANCE

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

A V-1. No. The regulations require that the affected client give informed consent. A client cannot give this consent unless they understand the situation giving rise to the conflict. A blanket waiver that addresses conflicts that have not yet arisen cannot be informed consent.

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

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