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NEWSLETTER

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Regarding Enrollment of Actuaries:

ACADEMY RESPONDS TO JOINT BOARD PROPOSAL

On May 9, 1975, the Joint Board for the Enrollment of Actuaries published a proposed regulation for enrollment procedures and the requirements for eligibility to be enrolled before January 1, 1976. Also included were rules of conduct for enrolled actuaries.

The Joint Board asked that those wishing to comment on the proposed regulations do so in writing by May 29. Public hearings on the proposed regulations were held June 2.

The Academy submitted comments with respect to certain aspects of the proposed regulations both in writing and at the Hearing. It was specifically stated that these were comments of concern to its membership.

In their statement at the Hearing, the Academy spokesmen urged the Joint Board to use more discretion in establishing standards making sure persons admitted as enrolled actuaries do, in fact, meet some minimal standard of qualification.

"We think, however, it is imperative that the standards for enrollment be established in such a fashion that the Joint Board and the public can be assured that any enrolled actuary has met at least a minimal level of actuarial competence," they said.

"Accordingly," the statement continued, "we are led to the conclusion that the only way to achieve this is to rely upon the examination to be given by the Joint Board as a uniform standard of minimum required actuarial knowledge."

Additionally, the statement recommended that after the scope of difficulty of its examination is established, the Joint Board could then waive such examination for persons who have already passed examinations which are at or above the level of comprehensiveness of the Joint Board exam.

Academy spokesmen at the Hearing included Daniel J. McNamara, President; Thomas P. Bowles, President-Elect; Edwin F. Boynton, Vice-President; Julius Vogel and Richard Congleton, Washington Counsel.

Many other Academy members attended the Hearing, including members of several Eastern Actuarial Clubs.

Text of the Academy statement at the Hearing follows, as does the proposed regulation.

The Academy's Committee on Federal Relations and Accreditation will continue to follow events closely.

STATEMENT OF AMERICAN ACADEMY OF ACTUARIES TO JOINT BOARD FOR ENROLLMENT OF ACTUARIES ON PROPOSED REGULATIONS FOR ENROLLMENT OF ACTUARIES

June 2, 1975

The American Academy of Actuaries is pleased to submit this statement of comments and recommendations on the draft regulations for the Enrollment of Actuaries under the provisions of the Employee Retirement Income Security Act of 1974 (ERISA). By letter of May 29, 1975, the Academy commented briefly on several aspects of the draft regulations which we wish to discuss more extensively at this time. As the Joint Board is aware, the Academy previously offered preliminary comments on possible standards for enrollment of actuaries in a statement dated January 16, 1975 and appeared at the previous hearings held by the Joint Board on March 20.

The American Academy of Actuaries was formed in 1965 as an umbrella organization for the four existing national actuarial organizations—Society of Actuaries, Casualty Actuarial Society, Conference of Actuaries in Public Practice, and Fraternal Actuarial Association. These actuarial organizations, or their predecessors, date back many years, one of them to the late 1800's, so that, despite the relatively short duration of its formal existence, the Academy and its predecessor and constituent organizations have represented the actuarial profession in the United States for over 80 years. There are presently more than 3,300 Members of the Academy engaged in all phases of actuarial work, and a significant percentage of them are involved in pension actuarial work covered by ERISA.

The Academy, as the national organization representing the actuarial profession, is pleased with the recognition in ERISA of the significance of the actuary in establishing sound funding practices for pension plans. It naturally has a deep interest in the standards that will be used to enroll actuaries for the purposes of the Act. One of the underlying reasons for the formation of the Joint Board is that the actuarial profession does not have the same recognized status under the law as the legal and medical professions. Similarly, one of the purposes in forming the Academy was to foster the development of a legally recognized profession with high standards of performance and conduct so that the public interest would be protected. Accordingly, the Academy believes that the purposes of ERISA will not be fulfilled unless appropriately high standards are set in the selection of enrolled actuaries.

In our letter of May 29, we outlined four areas of concern in the draft regulations which the Academy believed should be reconsidered. In this statement, we describe each of the four problems in more depth and give our suggestions as to possible solutions. The four areas of concern are: (1) the minimum qualifying period of responsible pension actuarial experience, (2) certain portions of the educational criteria in Section 901.12(c), (3) the Rules of Conduct, and (4) the "organizational qualifications" requirements. Since the first three points are more technical in nature, we have prepared an Appendix to this statement which discusses in more detail the problems in these areas. Briefly, our conclusions on these three points are as follows:

(1) With respect to 901.12(b), we believe the proposed requirement of 36 months of pension-related experience quite acceptable for individuals who have no other type of responsible actuarial experience. However, for actuaries who have received a satisfactory education in actuarial mathematics and methodology and who have completed 5 or more years of total responsible actuarial experience, a period of 12 months of responsible pension actuarial experience is sufficient.

(2) With respect to 901.12(c)(2), we do not believe that a bachelor's or higher degree in computer science with 6 semester hours (or 9 quarter hours) of courses in (or requiring the use of) life contingencies necessarily demonstrates the appropriate level of actuarial mathematics and methodology background. Nor do we believe that courses which simply require the *use of* life contingencies would necessarily provide an adequate knowledge of life contingencies.

(3) The Rules of Conduct as drafted raise many questions, both philosophical and practical, which are discussed in the Appendix. The principal thrust of the draft regulations is to establish as quickly as possible the rules for enrollment of actuaries, and there is not the same urgency about adopting the Rules of Conduct. We believe, therefore, that adoption of the Rules of Conduct should be deferred until there is more time for thorough consideration of underlying problems, and suggest that this section be deleted for now.

By placing the discussion of these issues in the Appendix, we do not mean to understate their significance, but rather we wish to focus principal attention on what we feel is the major problem in the draft regulations—organizational qualifications.

Organizational Qualifications

The Academy believes that the most serious flaw in the proposed regulations lies in Section 901.12(d), "Organizational Qualifications." Under this Section, certain classes of membership in several named actuarial organizations are effectively deemed equivalent to specified degrees in-

volving actuarial mathematics, or to passing an examination given by the Joint Board. The proposed Section "grandfathers" in as sufficient evidence of actuarial education an extremely wide range of demonstrated actuarial competence, ranging from individuals who have never had to demonstrate any evidence whatsoever of actuarial expertise to those with the equivalent of a Ph.D. in actuarial mathematics. The proposal as drafted, therefore, includes a significant number of persons who have no demonstrated actuarial qualifications whatsoever, and enrolling such persons as actuaries would undermine one of the objectives of the Act, which is to establish controls to assure sound funding of pension plans.

The proposed regulations give "organizational" credit to certain classes of membership of the American Academy of Actuaries (Academy), the Society of Actuaries (Society), the Conference of Actuaries in Public Practice (Conference) and the American Society of Pension Actuaries (ASPA). The Academy, as indicated earlier, is an umbrella organization which includes most members of the Society and Conference who have fulfilled the required period (5–7 years) of responsible actuarial experience and so, as Academy representatives, we are familiar with the membership requirements of these organizations. A large percentage of Academy members are Associates or Fellows of the Society of Actuaries, and certainly the Joint Board is aware of the rigorous examinations required to attain membership in that organization so that these educational qualifications are well-documented.

During the grandfather period of the Academy, a significant number of applicants were deemed to meet educational standards either by their membership in the Conference, by holding a degree in actuarial mathematics (similar to 901.12(c)), by taking an examination in actuarial mathematics given by the Academy, or by a subjective evaluation of their technical expertise in the actuarial field. This latter standard was, of course, the most difficult to evaluate, but a thorough analysis of each applicant's capabilities was made, based on his experience in the actuarial field, references from other qualified actuaries, and, in some cases, personal interviews. The screening process was carried out mostly by actuaries with proven educational background in actuarial mathematics, who were unlikely to admit candidates without demonstrated actuarial competence. All "borderline" cases as to technical actuarial competence were required to take an Academy examination in actuarial mathematics and methodology.

The Conference went through a similar procedure in admitting members for many years, but in each case where documentary evidence of actuarial education was not available, a thorough review was made of the applicant's background and experience to be certain of his technical qualifications. Both the Academy and Conference have, for the past several years, required rigorous examinations for admission.

The other organization whose Members and Fellows are included in 901.12(d) as educationally qualified is the American Society of Pension Actuaries (ASPA). The membership requirements of this organization have gone through, and are still undergoing, extensive changes. Most recently, ASPA has announced a new examination structure to commence in 1976 which is apparently aimed at upgrading their standards of membership. The Academy applauds any efforts by ASPA to improve the educational quality of its examination, but any evaluation of the future membership standards of ASPA will depend upon the degree of difficulty of the exams given and the standards used in establishing the passing grade.

However, the subject at hand is not what *future* membership standards might be proposed now by ASPA, but what standards have been used in the past to admit Members and Fellows of ASPA who would be grandfathered in under the proposed regulation. It is well established that a significant percentage of the ASPA membership who would meet the 901.12(d) standard have never had to demonstrate any knowledge of actuarial mathematics. The Joint Board should be well aware that for the first several years of ASPA's existence, "Membership" status could be attained simply by completing a one-question mail order examination and sending in $20. It is well known, and can be documented, that many insurance agents specializing in pension sales wrote to home offices of insurance companies to request the answer to the one-question exam so that they could become Members of ASPA, since the published requirements stipulated no other qualifications, such as responsible actuarial experience, or even any affiliation to the pension field. We do not question that most persons becoming Members of ASPA in this fashion were experienced salesmen, consultants or administrators in the pension field, but there were *no* requirements to demonstrate actuarial competence. Nor do we question the fact that ASPA has sponsored several membership meetings which have educational value for pension planners and administrators, but such meetings have had little or no actuarial content.

We understand that there are approximately 300 Members and Fellows of ASPA who would meet the 901.12(d) standard. We believe that at least 200 Members originally attained that status through the one-question route. We have been advised that many of these have subsequently taken Part III of the present ASPA exams which apparently involves some elementary pension mathematics. Although there is some confusion as to precise figures, it is apparently agreed that the sole qualification of at least one-third of the 300 ASPA Members and Fellows is the one-question open book exam.

Under these circumstances, we do not believe that Members of ASPA should receive "automatic" educational credit. While some of these individuals may well be qualified, Membership status in ASPA is certainly no evidence of such qualification.

A few years ago, ASPA did institute a series of five examinations. Our understanding is that Parts III and V thereof do have actuarial mathematics content, while Parts

I, II, and IV have none. We do not know whether these exams are sufficiently rigorous to be equivalent to the minimum standards the Joint Board will establish. However, representatives of the Academy have on past occasions had an opportunity to review in depth certain of the ASPA examinations, including not only the examination questions but actual examination papers of candidates. The conclusion reached was that, at best, such examinations only reached an elementary level of actuarial mathematics, not at all comparable to the standards of the Society of Actuaries examinations, or the standards of the Academy in its own special "grandfather" exam, which was admittedly substantially below the level of Society exams. We have been told that the standards have been improving, but we are concerned with a grandfather provision which would bring in Members of ASPA who met prior membership standards which admittedly are of a different character than present and proposed standards of ASPA.

Legislative History

We will return to the problem of establishing appropriate standards shortly in this presentation, but would like to comment also on certain aspects of the legislative history which have apparently led to this recognition of Members of ASPA in the draft regulation. The Chairman of the Joint Board appeared very recently at a meeting of the Society of Actuaries and made extensive comments on the factors which the Joint Board took into consideration in reaching this conclusion. To paraphrase his remarks, it was the Board's interpretation of the legislative history that it was the "clear intent of Congress to allow persons without the highest level of actuarial skills to continue to practice their trade." Thus the Joint Board apparently felt its powers to interpret the statute, in deciding upon who could become an enrolled actuary, were somewhat limited by the legislative history of the statute.

Many Members of the Academy, of course, have followed closely this legislative history of the development of the role of the actuary under ERISA. Based on the personal observations of those of us who were close to the scene, as well as Committee reports and other records available, it appears to us that a different interpretation of the legislative history of this provision is entirely reasonable and may well be closer to the intent of Congress.

We will not go far back into the historical development of the role of the actuary in this legislation. Needless to say, during the early years of developing the legislation, there was a growing recognition of the role and responsibility of the actuary, due in large measure to the activities of the American Academy as well as individual members of the profession. By 1973 or so, every major bill on "pension reform" had recognized the significance of the actuary in establishing funding requirements and other actuarial matters, and just about every committee report published emphasized the importance of having highly qualified actuaries to service the plans. For example, the Committee Report on S. 4 in 1973 stated:

> . . . The Committee is unaware of any significant licensing procedures for actuaries at either the state or federal level and this may, to some extent, explain inadequate funding procedures which have been found to exist. Generally speaking, the American Academy of Actuaries is regarded as the umbrella organization with the most rigorous standards for admission to membership, and the Committee intends that the Secretary should give due weight to membership in this organization or its equivalent as a basis for certifying actuaries under the Act.

The Academy in its contact with Congressional staff people emphasized the need for qualified actuaries, regardless of organizational affiliation, but did not recommend that the American Academy be named specifically in legislation. Legal counsel had some reservations about the constitutionality of such a provision, and we were aware of a general reluctance on the part of certain committees of Congress to give this kind of endorsement to a private organization. Nevertheless, certain Committee staff felt it was imperative to establish a high level of standards in the Act itself, and hence H.R. 2 in late 1973 specifically stated that a qualified actuary should be a Member of the American Academy of Actuaries or any other organization with equivalent standards, or a person who met such other qualifications as the Secretary might establish. However, when H.R. 2 was redrafted and reintroduced as H.R. 12781 in the next session of Congress, the specific reference to the American Academy was deleted and was replaced by language essentially along the lines of the requirement in ERISA for enrollment after 1/1/76.

The Chairman of the Joint Board interpreted the deletion of this reference to the Academy as an indication of Congressional intent to weaken the standards for enrolled actuaries. We do not believe this to be the case, based on the personal involvement of Academy representatives in this matter. When H.R. 12781 was being drafted, we were contacted by Committee staff who stated that the quasi-constitutional issues about which we earlier had reservations had indeed been raised, and that certain of the Committees involved objected to endorsement of any private organization. No doubt the lobbying efforts of ASPA against naming the Academy in the bill were of significant influence. However, we were asked, and complied with the request from the staff, to propose alternative language which would set standards of qualification *which would be as closely equivalent to Academy membership standards* as possible, without mentioning the Academy by name. The language which we proposed represents an attempt to use the same standards used by the Academy in admitting its members prior to 1970, including objective evidence of actuarial education, or examinations, and a period of responsible actuarial experience. Almost exactly the same

language which we suggested first appeared in H.R. 12781, and now appears in ERISA as the standard of enrollment commencing January 1, 1976.

In addition to these behind-the-scenes developments, there exists strong documented evidence that the deletion of the reference to the Academy was not done for the purpose of weakening the standards. The bill which finally emerged from Committee, following the introduction of H.R. 12781, was H.R. 12906, the first Committee-released bill following the deletion of the reference to the American Academy of Actuaries. The report accompanying the bill, dated February 26, 1974, includes the following language:

> . . . These statements will be certified by enrolled actuaries who meet qualifications established by the Secretary. The bill contains broad standards for establishing these qualifications but underlying all of them is the strong conviction of the Committee that any such standards must go directly to the issue of professional competency.
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> The assumptions utilized in determining plan liabilities and assets and the choice of appropriate valuation and funding methodology are crucial to adequate funding of a plan. The actuaries performing these plan services will fall within the definition of fiduciary and will be held to the duties imposed on such individuals, including personal liability for any breach of such duties. The Committee is convinced that notwithstanding the threat of personal liability, additional constraints are necessary to establish directly the professional qualifications of those who perform these vital services. In applying the standards for qualification outlined in the bill, the Secretary should be mindful of the difficult and sometimes subjective judgments to be made by actuaries and should take care that those who qualify be prepared to perform all of the tasks that may be required of an actuary under the bill. The prior restraints imposed on actuaries in the form of enrollment by the Secretary, as well as personal liability for failure to meet their responsibilities, impose a substantial burden on the actuary. The Committee is convinced that such burden is consistent with the importance of the function performed by these fiduciaries.

This quote was also contained in our January 16 statement but it is necessarily repeated here as documentary evidence that the House Labor Committee in making the specific change in language to delete the reference to the Academy did not intend to reduce the level of competency of actuaries who would be performing services under the Act. The draft language itself was specifically intended to use exactly the same standards as used by the Academy during its grandfather period.

The other major point in the legislative history which, according to the Chairman, the Joint Board relied upon in deciding that Congress intended the standards to be weakened relates to the so-called "second tier" of actuaries who would handle small simple plans. We are all aware of the enormous lobbying effort put forth by ASPA in an attempt to lower the standards for enrolled actuaries, which particularly emphasized the problems of small plans served by most ASPA members. The problem of handling small plans is indeed a difficult one under the Act.

It is important to bear in mind that one reason this problem did not become significant in earlier versions of pension reform bills is that many earlier drafts excluded small plans (such as under 25 lives), which avoided certification problems for small plans of the type serviced by ASPA members. It was only as the legislation developed in late 1973 and early 1974 and certification requirements were extended to virtually all plans that the problem became acute. Accordingly, ASPA at that time emphasized the certification problems of small plans. Academy representatives agreed that with the additional certification requirements there would at least be a difficult transition period before all such small plans could be brought under the guidance of well-qualified actuaries.

The Congressional task force's eventual response to the inclusion of certification requirements for small plans was the suggestion for the "second tier" level of actuaries to handle these small plans. However, it is most significant that the task force, and the Committees involved, *never* suggested that the overall level of competence required to have *unlimited* rights to carry out the duties of an enrolled actuary be lowered. The suggestion for creation of a second tier was, in fact, a continuing endorsement of the need for highly qualified actuaries to service most plans. We do not agree that the second tier recommendations in the Committee Report are an indication that Congress wanted the standards lowered overall. If anything, the implication is just the reverse—i.e., the Report seems to say that if lower qualification standards are necessary to provide certifications for small plans, then allow such persons to act *only* for certain types of small plans.

The Academy believes that the second tier approach was not in the best interests of small plan participants since the problems of small plans are not necessarily simple. In our January 16 statement to the Joint Board, we suggested an approach which we believe would be much more consistent with the objectives of the Act in the long run, and is entirely feasible to bring all plans eventually under the guidance of a thoroughly qualified actuary. Without going into detail, we believe that such small plans not now serviced by qualified actuaries can be serviced by the home offices of insurance companies underwriting such plans. We acknowledge that this is not an overnight solution, and that it may take a transition period to implement fully. However, a temporary waiver of certification requirements for small plans would assist greatly in this transition. Our purpose in mentioning this is not to debate the issue of how to handle small plans, but rather to underscore the conclusion that the second tier proposal itself was not intended to weaken the standards that would be

used to enroll actuaries generally. Rather, it was providing that a lower level of standards could be set for certain groups of people who would then be limited in the scope of their activities as actuaries.

In its final form, ERISA includes a special grandfather clause in addition to the enrollment standards discussed earlier, which were then made applicable as of 1/1/76. This grandfather clause undoubtedly does admit of lesser standards to be established for enrollment prior to 1/1/76, but was, of course, essential to implement the proposed second tier since "second tier actuaries" would obviously not meet the "first tier" criteria as originally drafted. The Joint Board has rejected the second tier approach, leaving unanswered the question as to whether Congress really intended a lower standard of competence for actuaries who would have unlimited rights to practice as enrolled actuaries.

There is one more step in the legislative chain which was not referred to by the Chairman of the Joint Board in his explanation of the rationale for the enrollment of Members of ASPA. This step was the creation of the Joint Board itself. Congress wrestled with the problem of defining in the statute criteria for the enrollment of actuaries, to establish standards which could be administered by one of the Secretaries. We believe that the creation of a Joint Board, which includes several qualified actuaries among its members, was itself a step by which Congress indicated its inability to define with precision who the enrolled actuaries should be. It therefore established only general guidelines in the statute and turned the interpretation over to a panel of experts. By creation of the Joint Board for Enrollment, Congress shifted a great deal of the responsibility of interpreting the level of competency required of an enrolled actuary to carry out his responsibilities under the Act. That is, we believe that Congress intended that the Joint Board use its own wisdom and judgment to decide the level of competency required to fulfill the purposes of the Act. With all due respect to the Joint Board, we believe that its members have leaned too heavily on their interpretation of legislative history in deciding that Congress has severely limited the Board's ability to establish appropriate standards. It seems only logical that Congress would much prefer that the basic objectives of the Act to protect the public interest and assure that the sound funding of plans be the principal focus of the Joint Board in establishing enrollment standards.

We recognize, of course, that the Joint Board undoubtedly has other sources of information available to it which are not public which bear on the interpretation of the legislative history. The analysis presented herein is merely attempting to raise questions as to whether Congress really intended to weaken the standards significantly for actuaries who would have an unlimited right to practice.

The Joint Board's responsibility is very great and, in the final analysis, its judgment will be an important factor in determining whether the underlying purposes of ERISA will be accomplished. If the Joint Board standards allow the enrollment of *any* persons who are not truly qualified as actuaries, then the Joint Board could be exposed to public criticism if there were to be future losses to plan participants or plan sponsors which could be attributed to the lack of actuarial training of such individuals.

Proposed Enrollment Standards

We believe the Joint Board has considerably more discretion in establishing standards than its members appear to believe. Our concern is not whether one organization or another is named in the regulation, but rather, whether or not persons admitted as enrolled actuaries do, in fact, meet some minimal standard of qualification. We do not believe the present draft regulation accomplishes this.

To summarize, we have serious doubts about the qualifications of members of ASPA, and it is a fact that a significant percentage of this group has never had to demonstrate any actuarial competence whatsoever. By the same token, we acknowledge that others could take the position that a number of Academy and Conference members have never demonstrated clearly objective standards of competence either. While we believe that all Academy and Conference members do have an appropriate background in actuarial mathematics and methodology, it is difficult to document objectively. We think, however, it is imperative that the standards for enrollment be established in such a fashion that the Joint Board and the public can be assured that any enrolled actuary has met at least a minimal level of actuarial competence.

Accordingly, we are led to the conclusion that the only way to achieve this is to rely upon the examination to be given by the Joint Board as a uniform standard of minimum required actuarial knowledge. We thus recommend that the entire Subpart (d) on Organizational Qualifications be dropped.

We believe, however, that it would be unnecessary and wasteful for certain individuals with unquestionable educational and examination backgrounds to be required to take the Joint Board exam. We recommend, therefore, that the Joint Board, after establishing the degree of difficulty of its examination, waive such examination for persons who have already passed a series of examinations which are at least of the level of difficulty of the Joint Board exam. Clearly, any person who is either a Fellow or an Associate of the Society of Actuaries would have achieved a level of competence which would be satisfactory for the Joint Board, and we would recommend that exams be waived for this group of persons. This waiver will alleviate considerably the problems connected with the administration of the Board's examination, since a large percentage of the eligible group consists of Associates and Fellows of the Society of Actuaries.

We do not believe that anyone can legitimately question the rigorous quality of the Society of Actuaries examinations, but we believe that these are the only examinations which should be acceptable for waiver. As indicated ear-

lier, review of actual ASPA examinations by Academy representatives in the past has indicated that only an elementary level of competence in actuarial mathematics is required to pass them. While others will disagree, it would appear to us that there is sufficient doubt about the quality of past ASPA examinations as to make it inappropriate for the Joint Board to accept them as evidence for a waiver of the Joint Board exam.

AMERICAN ACADEMY OF ACTUARIES—STATEMENT TO JOINT BOARD FOR ENROLLMENT OF ACTUARIES

APPENDIX

Technical comments on Draft Regulations for Enrollment Relating to:

Minimum Qualifying Experience

Qualifying Formal Education

Rules of Conduct for Enrolled Actuaries

Minimum Qualifying Experience

Subsection (b) of Section 901.12 of the proposed regulations states two alternative experience criteria. These alternatives are:

(i) A minimum of 36 months of responsible pension actuarial experience; and
(ii) A minimum of 60 months of responsible actuarial experience including at least 24 months of responsible pension actuarial experience.

We believe that this requirement is generally consistent with the purposes of ERISA and appropriate in light of the enrolled actuary's responsibilities thereunder. It is also essential, given the tendency for actuaries to move from one type of work experience to another, that an applicant with substantial actuarial experience that is responsible but not pension-related be allowed to substitute this for part of the requisite pension-related experience.

A *total* period of 36 months of responsible pension actuarial experience seems a necessary pre-condition to the demonstration of adequate competence, such as in the case of a recent college graduate with adequate educational credits in actuarial mathematics but no practical experience. If the applicant's experience is mixed, however, we agree that a *longer* total period of responsible actuarial experience should be required and 60 months seems a reasonable length. Our reservation is with the requirement that *24* of these 60 months must be pension-related.

It is our experience that actuaries who have received a satisfactory education in actuarial mathematics and methodology and who have completed at least five years of total responsible actuarial experience that is not all pension-related will generally acquire competence in the actuarial aspects of pension plans if 12 months of the experience is pension-related. In this regard, many insurance companies assign actuaries to the pension department for "tours of duty" of between one and two years, during which period of time these actuaries, if they have several years of other responsible actuarial experience, can rather rapidly acquire sufficient knowledge of the pension field as to be fully qualified to meet the responsibilities of an enrolled actuary. Similarly, it is often the case that actuaries with many years of insurance company experience, not necessarily pension-related, move to positions with actuarial firms engaged in the practice of pension consulting. We believe that within a year or so, such experienced actuaries become sufficiently acclimatized to the pension field to carry out competently the responsibilities of an enrolled actuary.

We therefore believe that the requirement of as much as 24 months of pension-related experience from an applicant with substantial "mixed" experience will prevent a significant number of truly qualified individuals from becoming enrolled actuaries. In our view, *12* months' pension-related experience is a more suitable requirement in these cases.

Accordingly, we recommend that the language of Subsection (b)(2) of Section 901.12 be altered to read:

> (2) A minimum of 60 months of responsible actuarial experience, including at least 12 months of responsible pension actuarial experience.

Qualifying Formal Education

Subsection (c) of Section 901.12 sets out two alternative criteria as to formal education that will suffice to demonstrate that an applicant for enrollment has received an adequate education in actuarial mathematics and methodology for the purposes of ERISA.

We have no quarrel with the first criterion—a bachelor's or higher degree in actuarial science awarded by an accredited college or university. Individuals receiving such degrees have in most cases (or certainly should have) re-

ceived education with respect to at least those aspects of actuarial science that are tested in what are now the first four Associateship examinations of the Society of Actuaries, including life contingencies. Moreover, Section 3042(a) of the Act specifically refers to a degree in actuarial science as one criterion for demonstrating an adequate education in actuarial mathematics and methodology for purposes of post-1975 enrollment.

We do, however, have serious reservations as to the appropriateness of the alternative criterion set forth in Subsection (c)(2)—a bachelor's or higher degree in mathematics, statistics or computer science from an accredited college or university, including 6 semester hours (or 9 quarter hours) of courses in life contingencies and/or requiring the use of life contingencies. We recognize that the intent of this criterion is to permit the enrollment of individuals who have formal education qualifications which are germane to actuarial mathematics and methodology but which are not as specifically focused on actuarial science. For this purpose, degrees in mathematics and statistics and the requirement of a minimum content of courses in life contingencies do appear to be relevant tests under a less rigorous criterion. However, we believe that in two respects the criteria do not require sufficient evidence of a suitable level of education in actuarial mathematics and methodology—the recognition of degrees in *computer science* and the recognition of courses *involving the use of* life contingencies.

We cannot agree that the holding of a degree in computer science, even with some involvement in life contingencies, offers any assurance of a comprehension of actuarial mathematics and methodology adequate to enable an individual to carry out the responsibilities of an enrolled actuary. Degrees in mathematics and statistics incorporate an education in mathematical, probabilistic and statistical theory which have relevance to the bases of actuarial science, and there is therefore some expectation that the holder of such a degree, provided he has had some exposure to life contingencies, would meet at least minimal education standards. An individual may, and often does, obtain a degree in computer science without taking courses of such a type. The point is not, of course, that a person with a degree in computer science and certain courses involving life contingencies is necessarily unqualified in his educational background. It is rather that his credentials offer no assurance that he has an appropriate background and hence should not be accepted as a suitable qualification.

The problem of suitability is equally as severe in the case of courses *involving the use of* life contingencies. This language is far too vague to be objective. What does the "use" entail? The mere manipulation of life table functions? Or, even worse, a general course in insurance where the student becomes familiar with how to calculate the premium for a life insurance policy? The introduction of the concept of "use" of life contingencies is far too broad a term to prove a thorough knowledge of actuarial mathematics and methodology.

If both of these elements—computer science degrees and courses involving the use of life contingencies—are removed from Subsection (c)(2), then this criterion would offer a less rigorous but still reasonable and objective alternative to an actuarial science degree. Any truly qualified person whose enrollment would be adversely affected by these deletions could, of course, seek enrollment through the medium of the Board examination, which would serve as an objective test of his qualifications.

We therefore recommend strongly that Subsection (c)(2) of Section 901.12 be reworded as follows:

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

Rules of Conduct for Enrolled Actuaries

Section 901.20 of the draft regulations set out certain general Rules of Conduct with which actuaries enrolled for the purposes of ERISA are expected to comply.

As a professional organization, the Academy is dedicated to the establishment, promotion and maintenance of high standards of conduct and competence within the actuarial profession. It accordingly has promulgated rules of professional conduct for its own members and has a mechanism for enforcing adherence to such rules.

Naturally enough, we support the concept that actuaries enrolled under ERISA should be held to high standards of professional conduct. Otherwise, there can be no assurance at all that the goals of ERISA to protect and enhance benefit security under private pension plans will be realized. As it is evident that not all enrolled actuaries will be members of organizations having strong, enforceable standards of conduct, some mechanism for achieving these goals appears desirable. The language of proposed Section 901.20 is intended to achieve this. We have reservations, however, as to whether such a section should be included in the *regulations* at this time, when the principal problem is to establish the eligibility rules for enrolled actuaries.

Our doubts stem from a number of considerations:

> (1) The proposed language is so broad that it would appear, at least with respect to the requirements of Subsections (a) through (f), to extend in scope beyond what is required of the enrolled actuary under ERISA and to define rules of behavior for all his actuarial activities. We believe this exceeds what is necessary for the purposes of implementing ERISA and may in fact be outside the powers of the Joint Board. The requirement of Subparagraph (a)—not to undertake any assignment where the training and experience are not appropriate—is particularly sweeping and troublesome to interpret.

(2) The requirement of Subsection (b)—to avoid situations where there is a possibility of fraudulent usage of the actuary's work—would appear to be inherent in the specific language of ERISA itself and, if not found there, would certainly be covered under general statutes on fraud. Hence it seems unnecessary to restate it in the Regulations.

(3) The requirements of Subsections (c), (d), (e), and (f)—pertaining to advice given to administrators, conflicts of interest, care taken with respect to calculations and assumptions, and the submission of reports—are also incorporated in ERISA itself, and hence need not be repeated in the Regulations. Such a situation could lead to conflicting interpretations between the Joint Board and other involved agencies.

(4) The portion of Subsection (e) which enjoins the actuary to exercise care, skill, prudence and diligence in ensuring that the data used in calculations are sufficient and reliable appears to impose an "audit" function on the actuary which may exceed what is reasonably required of *him* (as distinct from the employer, administrator or auditor) under ERISA. It also implies a fiduciary role for the actuary, a decision which we believe is within the purview of the Labor Department.

(5) Subsection (g), pertaining to compensation, really concerns reporting by an actuary rather than his conduct. This is generally reasonable, in order to provide information as to situations where conflict of interest may arise. However, how does this differ from his other reporting requirements under ERISA?

(6) Moreover, the specifics of Subsection (g) appear to call for disclosure of more information than is needed for the implementation of ERISA and can lead to unreasonable administrative complications. The major area of difficulty is the requirement that an enrolled actuary for a plan must disclose to the plan administrator compensation received with respect to *any* assignment undertaken for *any* employer contributing to the plan, even when the assignment had no relationship to the plan as such.

—If the individual or one of his colleagues with his firm or company is enrolled actuary for a number of benefit plans for the same employer, must all compensation with respect to all plans be reported to all administrators? In the case of a large, diverse firm or company, with actuarial responsibilities divided among several individuals or offices of a consulting firm, this information may be hard to obtain.

—If the individual or his firm or company carries out services for the employer which are other than actuarial (e.g., management consulting, auditing, benefit statements, general insurance), must compensation as to these services also be reported? Here, too, the information can be hard to obtain, and seems irrelevant.

—Taft-Hartley plans are particularly troublesome. If such a plan covers employees of a very large number of employers, but only a very few employees in many instances, is the enrolled actuary expected to report compensation received with respect to all services which he or his firm or company renders to all such employers? Once again, the assemblage of this information could be an administrative nightmare, and to little effect. For example, some Taft-Hartley plans include 15,000 or more employ*ers* on a nationwide basis, with the number of employees covered by the Taft-Hartley plan at any one company often being an insignificant percentage of the total employees of the company.

The language of Subsection (g) also seems to be ambiguous as to whether the focus is solely on the compensation received by the enrolled actuary's firm or company, in cases where he is not an individual practitioner, or whether he is expected to report the specific amount of salary plus bonus plus benefit payments he receives from his firm or company in return for his work on a specific case. If the latter, the administrative difficulties are frightful —and, we believe, totally unnecessary.

(7) It is troublesome, at least in a theoretical sense, to have rules of conduct incorporated in the regulations when the companion regulation pertaining to the discipline of errant actuaries is not also spelled out. For example, would failure to report compensation pursuant to Subsection (g) be grounds for suspension or termination of enrollment?

All of these doubts and concerns have led us to conclude that it is unnecessary at this time to incorporate rules of conduct in the regulations. The principal thrust of the proposed regulations is to establish as quickly as possible rules for the pre-1976 enrollment of actuaries, and we do not see the same urgency with respect to the rules of conduct. Most of the items covered therein are already covered under ERISA itself, and it would seem better to rely for the moment on the requirements of ERISA, and on the rules of conduct of the professional actuarial organizations. If additional rules are needed, then they can certainly be implemented at a later date, in leisure and after reasoned consideration of the problem areas referred to above.

We therefore recommend that the language of Section 901.20 be deleted and that this become another *reserved* Section.

PROPOSED RULES

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

[20 CFR Parts 901, 902]

ENROLLMENT OF ACTUARIES; ACCESS TO RECORDS

Proposed Procedures and Requirements

Notice is hereby given that the regulations set forth below are proposed to be prescribed by the Joint Board for the Enrollment of Actuaries.

The proposed Part 901 establishes the requirements for eligibility to perform actuarial services under the Employee Retirement Income Security Act of 1974, Pub. L. 93-406. The proposed rules set forth enrollment procedures and the requirements for eligibility to be enrolled before January 1, 1976. In addition, the proposed rules set forth rules of conduct for enrolled actuaries.

The proposed Part 902, which is designed to comply with the requirements of the Freedom of Information Act, Pub. L. 93-502, provides for access by the public to information created or maintained by the Joint Board for the Enrollment of Actuaries. They provide for publication of certain documents in the FEDERAL REGISTER and public inspection of records. They also provide procedures for making a request for records of the Joint Board, for appeal of an initial or appellate administrative determination to deny such a request, and the schedule of fees for search and duplication of records.

Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing to the Executive Director, Joint Board for the Enrollment of Actuaries, c/o Department of the Treasury, Washington, D.C. 20220, by May 29, 1975. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should notify the Executive Director, Joint Board, at the above address or telephone (Washington, D.C.) 202-634-5071, by May 29, 1975, of that desire and of the length of time requested for such comments. A public hearing on the provisions of such proposed regulations will be held on Monday, June 2, and if necessary, Tuesday, June 3, 1975, beginning at 9:30 a.m., e.d.t., in Conference Room N3437 A&B, New Department of Labor Building 200 Constitution Avenue, NW., Washington, D.C. The Chairman, Joint Board, reserves the right to limit the length of presentations at the hearing. The proposed regulations are to be issued under the authority contained in section 3042, Subtitle C of Title 3 of the Employee Retirement Income Security Act of 1974, (88 Stat. 1002, 29 U.S.C. 1241, 1242.)

Title 20, CFR, is hereby revised by the addition to Chapter VIII, entitled Joint Board for the Enrollment of Actuaries, of a new Part 901, entitled Regulations Governing the Performance of Actuarial Services under the Employee Retirement Income Security Act of 1974, as set forth below. In addition, such Title is hereby revised by the addition to Chapter VIII of a new Part 902, entitled Rules Regarding Availability of Information, as also set forth below.

The new Part 901 of Chapter VIII of Title 20, CFR, reads as follows:

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. [Reserved.]

Subpart C—Rules of Conduct for Enrolled Actuaries

901.20 Rules of conduct in the performance of actuarial services.

Subpart D—Suspension and Termination of Enrollment [Reserved]

Subpart E—General Provisions

901.40 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).

§ 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; Subpart C of this part sets forth rules of conduct 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 or 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 and/or the occurrence of certain specified events.

(b) "Responsible actuarial experience" means actuarial experience involving:

(1) Significant participation in the determination that the methods and assumptions adopted and the procedures followed are appropriate in the light of all pertinent circumstances, and

(2) Demonstration of a thorough understanding of the principles and alternatives involved.

(c) "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.

(d) "Applicant" means a person who has filed an application to become an enrolled actuary.

(e) "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.

(f) "Actuarial services" means performance of actuarial valuations and preparation of any actuarial reports required or submitted under ERISA or regulations thereunder.

§ 901.2 Eligibility to perform actuarial services.

(a) *Enrolled actuary.* Subject to the rules of conduct set forth in Subpart C of this part, any individual who is a duly enrolled actuary as defined in § 901.1(e) may perform actuarial services except as provided in paragraphs (b) and (c) of this section.

(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 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 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 or aid or assist in the performance of 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 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.

(CONTINUED)

Subpart B—Enrollment of Actuaries

§ 901.10 Application for enrollment.

(a) *Form.* An applicant for enrollment shall file with the Executive Director of the Joint Board a properly executed application on a form or forms specified by 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. The Executive Director shall, upon written request, afford an applicant the opportunity to be heard with respect to his application for enrollment.

(c) *Denial of application.* If the Joint Board proposes to deny an application for enrollment the Executive Director shall advise the applicant in writing of the proposed denial and the reasons therefor. The applicant may, within 30 days from the date of the written proposed denial, file a written appeal therefrom, together with his reasons in support thereof, to the Joint Board. The Joint Board may afford an applicant the opportunity to be heard. A decision on the appeal shall be rendered by the Joint Board as soon as practicable. In the absence of an appeal 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. Each enrollment shall be valid for a period of five years from its date or the date of any renewal thereof. Subject to the provisions of Subpart D of this part, an enrollment shall, upon application made not more than six months before the date of its expiration, be automatically renewed for a period of five years from such date.

(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.

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

(a) *In general.* To qualify as an enrolled actuary an applicant must fulfill the requirements set forth in paragraph (b) of this section and, in addition, the requirements set forth in paragraphs (c), (d) or (e) of this section.

(b) *Qualifying experience.* Within a 15 year period immediately preceding the date of application, an 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 24 months of responsible pension actuarial experience.

(c) *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 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 completion of a course of study in which the major area of concentration was mathematics, statistics, or computer science, including at least 6 semester hours or 9 quarter hours of courses in life contingencies and/or courses requiring use of life contingencies.

(d) *Organizational qualification.* (1) Before March 1, 1975, the applicant shall have attained one of the following classes of affiliation or qualification in one of the following organizations:

(i) Member of the American Academy of Actuaries,

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

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

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

(v) A class attained by 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 examinations administered by any of the above organizations before March 1, 1975; or

(2) On or after March 1, 1975, the applicant shall have attained one of the classes of qualification specified in paragraph (d)(1) of this section, the attainment of such qualification having been by examination under requirements determined by the Joint Board to be of not lower standards than the requirements for qualification before March 1, 1975.

(e) *Board examination.* 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.

(f) *Disreputable conduct.* The applicant may be denied enrollment if it is found that he/she has engaged in any disreputable conduct including the following:

(1) Commission at any time after his/her eighteenth birthday of any offense referred to in section 411 of ERISA, or commission of any other offense involving violation of a fiduciary or trust relationship.

(2) Submission of a false or misleading answer on an application for enrollment to perform actuarial services or in any oral or written information submitted in connection therewith knowing the same to be false or misleading.

(3) Other conduct evidencing dishonesty or breach of trust.

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

Subpart C—Rules of Conduct for Enrolled Actuaries

§ 901.20 Rules of conduct in the performance of actuarial services.

In the performance of actuarial services with respect to plans to which ERISA applies:

(a) *In general.* An enrolled actuary shall not undertake any actuarial assignment for which he/she does not have appropriate training or experience.

(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 and/or explanation relative to any report signed or certified by such enrolled actuary.

(d) *Conflicts of interest.* Without regard to Part 4 of Title I of ERISA and section 4975 of the Internal Revenue Code of 1954, as amended, in any situation in which there is or may arise a conflict of interest involving actuarial services, the enrolled actuary shall not perform such actuarial services except after full disclosure has been made to all directly interested parties.

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

(1) The data used in any actuarial calculations are sufficient and reliable, the actuarial assumptions are reasonable in the aggregate, and the actuarial cost method is appropriate,

(2) The calculations on the aforementioned basis are accurately carried out, and

(3) The report and/or recommendations to the plan administrator duly 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 inadequacies therein and the implications thereof, and the actuarial methods and assumptions employed.

(g) *Disclosure of compensation.* Without regard to Part 4 of Title I of ERISA and section 4975 of the Internal Revenue Code of 1954, as amended, an enrolled actuary shall provide to the plan administrator a complete and timely record of the amounts and sources of all direct and indirect compensation that is or may be received by him/her or his/her firm or employer from any person other than the plan administrator in relation to any assignment the enrolled actuary or his/her firm or employer has undertaken for such plan administrator or for any employer contributing to the plan, excluding any gain to an insurance company as the result of issuing contracts.

Subpart D—Suspension and Termination of Enrollment [Reserved]

Subpart E—General Provisions

§ 901.40 Special orders.

The Joint Board reserves the power

(CONTINUED)

to issue such special orders as it may deem proper in any cases within the scope of this part.

PART 902—RULES REGARDING AVAILABILITY OF INFORMATION

The new Part 902 of Chapter VIII of Title 20, CFR, reads as follows:

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).

§ 902.1 Scope.

This part is issued by the Joint Board for the Enrollment of Actuaries (the "Joint Board") pursuant to the requirements of section 552 of Title 5 of the United States Code, including the requirements that every Federal agency shall publish in the FEDERAL REGISTER, for the guidance of the public, descriptions of the established places at which, the officers from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions.

§ 902.2 Definitions.

(a) *"Records of the Joint Board."* For purposes of this Part, the term "records of the Joint Board" means rules, statements, opinions, orders, memoranda, letters, reports, accounts and other papers containing information in the possession of the Joint Board that constitute part of the Joint Board's official files.

(b) *"Unusual Circumstances."* For purposes of this part, "unusual circumstances" means, but only to the extent reasonably necessary for the proper processing of the particular request:

(1) The need to search for and collect the requested records from other establishments that are separate from the Joint Board's office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request.

§ 902.3 Published information.

(a) *Federal Register.* Pursuant to sections 552 and 553 of Title 5 of the United States Code, and subject to the provisions of § 902.5, the Joint Board publishes in the FEDERAL REGISTER for the guidance of the public, in addition to this part, descriptions of its organization and procedures, substantive rules of general applicability, and, as may from time to time be appropriate, statements of general policy, and interpretations of general applicability.

(b) *Other published information.* From time to time, the Joint Board issues statements to the press relating to its operations.

(c) *Obtaining published information.* If not available through the Government Printing Office, published information released by the Joint Board may be obtained without cost from the Executive Director of the Joint Board ("The Executive Director").

§ 902.4 Access to records.

(a) *General rule.* All records of the Joint Board, including information set forth in section 552(a)(2) of Title 5 of the United States Code, are made available to any person, upon request, for inspection and copying in accordance with the provisions of this section and subject to the limitations stated in section 552(b) of Title 5 of the United States Code. Records falling within such limitations may nevertheless be made available in accordance with this section to the extent consistent, in the judgment of the Chairman of the Joint Board (the "Chairman"), with the effective performance of the Joint Board's statutory responsibilities and with the avoidance of injury to a public or private interest intended to be protected by such limitations.

(b) *Obtaining access to records.* Records of the Joint Board subject to this section are available by appointment for public inspection of copying during regular business hours on regular business days at the office of the Executive Director. Every request for access to such records, other than published records described in § 902.3, shall be submitted in writing to the Executive Director, shall state the name and address of the person requesting such access, and shall describe such records in a manner reasonably sufficient to permit their identification without undue difficulty.

(c) *Fees.* A fee at the rate of $5.00 per hour for the time required to locate such records, plus ten cents per standard page for any copying thereof, shall be paid by any person requesting records other than published records described in § 902.3. In addition, the cost of postage and any packaging and special handling shall be paid by the requester. Documents shall be provided without charge or at a reduced charge where the Chairman determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefitting the general public.

(d) *Actions on requests.* The Executive Director shall within ten days (excepting Saturdays, Sundays and legal public holidays) determine whether to comply with such requests for records and shall immediately notify in writing the person making such request of such determination and the reason therefor, and of the right of such person to appeal any adverse determination, as provided in § 902.5. In unusual circumstances, the time limit for the determination may be extended by written notice to the person making such request setting forth the reasons for such extension and the date on which the determination is expected to be dispatched. No such notice shall specify a date that will result in an extension of more than ten working days.

(e) *Deletion of identifying details.* Before any records are made available under § 902.4(a), any identifying details, the disclosure of which would be an unwarranted invasion of personal privacy, shall be deleted by the Executive Director and justification therefor shall be made in writing.

§ 902.5 Appeal.

(a) Any person denied access to records requested under § 902.4, may within thirty days after notification of such denial file a written appeal to the Joint Board. The appeal shall provide the name and address of the appellant, the identification of the records denied, and the dates of the original request and its denial.

(b) The Joint Board shall act upon any such appeal within twenty days (excepting Saturdays, Sundays and legal public holidays) of its receipt, unless for unusual circumstances the time for such action is deferred, subject to § 902.4(b), for not more than ten days. If action upon any such appeal is so deferred, the Joint Board shall notify the requester of the reasons for such deferral and the date on which the final reply is expected to be dispatched. If it is determined that the appeal from the initial denial shall be denied (in whole or in part), the requester shall be notified in writing of the denial, of the reasons therefor, of the fact the Joint Board is responsible for the denial, and of the provisions of section 552(a)(4) of Title 5 of the United States Code for judicial review of the determination.

(c) *Time extensions.* Any extension or extensions of time under §§ 902.4(d) and 902.5(b) shall not cumulatively total more than ten days (excepting Saturdays, Sundays and legal public holidays). If an extension is invoked in connection with an initial determination under § 902.4(d), any unused days of such extension may be invoked in connection with the determination on appeal under § 902.5(a) by written notice from the Joint Board.

Approved for publication in the FEDERAL REGISTER.

Dated: May 8, 1975.

DONALD S. GRUBBS, JR.,
DONALD S. GRUBBS, JR.,
Chairman, Joint Board for Enrollment of Actuaries.