



CONFERENCE OF CONSULTING ACTUARIES

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RE: Joint Board Regulations

We are writing on behalf of the Corporate Qualified Pensions Community and the Smaller Actuarial Consulting Firms Community of the Conference of Consulting Actuaries (CCA) to formally request that the Joint Board consider amending its regulations *Part 901 – Regulations Governing the Performance of Actuarial Services under the Employee Retirement Income Security Act of 1974* with respect to the definition of “Formal Programs” under §901.11(f)(2)(ii).

The comments included herein were developed through the coordinated efforts of members of these CCA communities. The members of these Communities represent a broad cross-section of EAs whose extensive experience with the current requirements for earning EA CE credits provides the framework for our comments. However, these comments do not necessarily reflect the views of the entire Corporate Qualified Pensions or Smaller Actuarial Consulting Firms Communities, the CCA, the CCA’s members, or any employers of CCA members, and should not be construed in any way as being endorsed by any of the aforementioned parties.

Background

Regulation §901.11(f)(1) requires that “no less than 1/3 of the total hours of continuing professional education credit required for an enrollment cycle must be obtained by participation in a formal program or programs.” Part of the definition of a “formal program” requires that “the participant simultaneously participates in the program in the same physical location with at least two other participants engaged in substantive pension service. Groups of three or more participants who are in the same physical location may participate in a formal program in person or via the Internet, videoconferencing, or teleconferencing”.

For many years, enrolled actuaries (EAs) have suggested that the requirements described above be updated to reflect technology improvements beyond the early days of teleconferencing or videoconferencing (examples are the ability to poll the audience and to electronically submit comments and questions to the speakers) and the prevalence of remote work. The requirement that three individuals be in the same physical location has posed considerable difficulty for many EAs for some time, and even in some cases discouraged individuals in pension practice from pursuing the credential. Current circumstances, with most of us working remotely and in-person conferences being cancelled for an unknown period, will exacerbate the issues that are already encountered with this requirement.

We describe below the problems that EAs encounter with the “physical presence” requirement, discuss the Joint Board’s possible policy goals for Continuing Education (“CE”) that the requirement was intended to further, and discuss why we believe the policy goals are well served without the “physical presence” requirement.

Challenges with Formal Requirements

While physically gathering in groups of three or more for CE may not seem like a big obstacle, it has been for many EAs. In the current work environment, it is anticipated that this difficulty will become even more common. Reasons for the growing difficulty in meeting this requirement follow:

- According to the roster of EAs who had “active status” as of November 27, 2019, 26 states have 20 or fewer EAs, including 20 that have fewer than 10¹ (not including the two states that have none²).
- Even within states with many EAs, a growing number of us have been working remotely, as corporate policies and technology are becoming more accommodating of such arrangements. The ability to work remotely has removed the limitation that EAs must live and work in a few urban areas within a state. In fact, there are increasing numbers of new job openings that offer EAs the opportunity to work remotely. Of course, the current health crisis has caused nearly all EAs to work remotely.

While a large actuarial firm with centralized offices in urban areas may be able to provide CE opportunities that meet the requirements for a formal program to their employees, small and mid-sized actuarial firms may not be able to. In addition, individual actuaries at such large firms

¹ AK, AL, AR, DE, ID, KS, LA, ME, MS, MT, NH, NM, NV, OK, RI, SC, SD, UT, VT, and WY

² ND and WV

may work remotely and not easily be able to travel to an office to participate in CE sessions. The expense of attending actuarial meetings to receive formal credit can be a logistical and financial challenge for such individuals and for sole practitioners and small firms:

- Actuarial conferences may require distant travel and lengthy time away from an EA's work location. Depending on the underlying reasons for a work-remote arrangement, this travel can be a hardship. Even EAs who do not work remotely but are not able to easily gather in a room with other individuals in substantive pension practice may have circumstances that make being away for several days to attend a conference problematic.
- Because of the existence of high-quality continuing education through electronic methods (such as those referenced in the Regulations), the expenses of an in-person conference may not always be covered by an EA's employer. The EA may be forced to personally bear the expenses to meet the formal program requirement. Even where the expenses may be generally covered by the employer, there is always a risk that the policy changes, either temporarily or permanently, because of economic conditions.
- For sole practitioners, the expense of attending in-person meetings, combined with the time the sole practitioner must spend away from the office, including travel time, can make attendance extremely challenging both from a financial and a client service perspective.

The recent events relating to COVID-19 and market volatility are an extreme yet vivid example of the growing difficulties of the Regulations' formal program requirement. In recent years, corporate expense control has limited employees' access to in-person meetings involving travel, and in-person meetings are not feasible at all during the time of social-distancing. In addition, companies will need to tightly control spending while recovering from this event, and policies restricting unnecessary travel may continue for a time after the immediate danger has passed.

Had these current events occurred during the final year of the three-year EA renewal cycle, rather than during the first year, the urgency of this request would be even greater. But the larger point is that these types of events cannot be predicted, and the "physical presence" requirement was already a challenge for many actuaries, and so we believe it is better to adopt policies that will work under a wide range of circumstances.

Policy Goals for the Formal CE Requirement

Following is the description of "Formal Program" from the Regulations (§901.11(f)(2)(ii)):

(A) Participants.A qualifying program qualifies as a formal program with respect to a participant if the participant simultaneously participates in the program in the same physical location with at least two other participants engaged in substantive pension service, and the participants have the opportunity to interact with another individual qualified with respect to the course content who serves as an instructor, whether or not the instructor is in the same physical location. Groups of three or more participants who are in the same physical location may participate in a formal program in person or via the Internet, videoconferencing, or teleconferencing. If the qualifying program is pre-recorded, to qualify as a formal program, there must be a qualified individual who

serves as the instructor and is available to answer questions immediately following the pre-recorded program.

(B) *Instructor*. A qualifying program is a formal program with respect to the instructor only if the program is a formal program under paragraph (f)(2)(ii)(A) of this section with respect to at least three participants and the instructor is in the physical presence of at least three other individuals engaged in substantive pension service.

The description above suggests that the primary concern is that participants have the opportunity to interact with the speakers (i.e., make comments and ask questions). We agree that interaction between participants and speakers is valuable. At an in-person event, speakers often remain after the presentation to respond to questions that either weren't addressed during the event or that attendees ask later. Similarly, all online webcasts now provide that same opportunity to ask questions or make comments, both during the event and afterwards (e.g., via the speakers responding to questions after the webcast has ended). The ability to have questions addressed by the panelists in a virtual CE session is no different than for in-person events. While not all questions may be answered during the session proper (depending on available time, whether the question is of broad interest to the attendees or has a narrow focus, and other limitations), this is equally true of in-person and remote sessions.

If the instructor of a session is not in the same physical space as any attendee, the number of "non-local" participants does not affect the ability of these participants to ask questions or make comments. This is true if there is one person in a physical location, three people in that physical location, or dozens of people in that physical location: all of them are remote from the instructor. Instructors are accessible and the ability to actively participate in the session exists.

Some have suggested that there is additional value in the "same physical location" requirement because it encourages follow-on discussions after the end of the session. We note that there has never been a requirement (whether in the Joint Board regulations or on the part of CE providers) that such discussions occur among attendees after a session ends, and, based on our collective experience, we do not believe that such on-the-spot follow on discussions happen very often. In addition, for any type of session, attendees will often have questions after they have digested the material or had to apply it in their work and they will then reach out to the speakers, co-workers who may have attended the session (even if not in the same room), more experienced practitioners or others to discuss. We do not believe there is significant additional value in having an immediate ability to have a follow-on discussion with someone physically in the same room. In addition, we note that discussions amongst people in the same room during the presentation can be distracting and detract from the ability of participants to focus on the topic when attending a session.

To our knowledge, CE requirements for other types of professionals (e.g., enrolled agents, CPAs, attorneys) do not include this requirement. We also note that, due to the nature of remotely delivered programs that are sponsored by CCA and other actuarial organizations, with panelists drawn from different organizations and participants from different organizations submitting questions and comments, practitioners receive the benefit of hearing a broader range of perspectives on a topic than they may hear if they had to rely only on actuaries they interact with in their work. This ability to hear a broader range of perspectives is much more valuable than having two other people in the same room during the session.

Suggestions for Change

We believe that the “three or more participants who are in the same physical location” requirement presents significant obstacles and is not needed for the EA to understand and absorb the content of the session, and we ask that it be eliminated. We believe that the existing requirements other than the formal program requirement, and the nature of the virtual CE sessions currently offered, produce high-quality CE (for example, the variety of topics, including core, non-core and ethics, the broad range of perspectives presented, the attendance verification, the ability to interact with speakers).

We appreciate your consideration of our comments and would be willing to have a call or to meet with you to discuss them further. Note that we would also be happy to discuss other clarifications that might be made to the regulations. Please contact Kelly Fanella, the CCA’s Executive Director, at 847-719-6505 or kfanella@ccactuaries.org, if you have questions or would like to discuss these comments with us.

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