

October 30, 2020

The Board of Directors and The Committee on Qualifications
American Academy of Actuaries
1850 M Street, NW, Suite 300
Washington, DC 20036

To the Committee on Qualifications, Katherine Campbell, Chair:

This letter provides comments on the September 2020 Exposure Draft (ED) of the proposed revisions to the *Qualification Standards (including Continuing Education Requirements) for Actuaries Issuing Statements of Actuarial Opinion in the United States (USQS)* by the undersigned actuaries, all of whom are subject to the Qualification Standards. We appreciate the opportunity to comment.

Summary

We believe that the Qualification Standards should focus on the competency and professionalism of U.S. actuaries by requiring appropriate basic education, experience, and continuing education that is relevant to the Statement of Actuarial Opinion (SAO) that the actuary prepares. Based on the ED, we believe that certain proposed amendments to the existing Qualification Standards are not focused on those aims and instead focus on membership in particular actuarial organizations.

In addition, we note that the transmittal letter indicates that the proposed revisions are intended to be merely clarifications, not changes, and that the changes would not disqualify actuaries who were previously qualified. We believe that the revisions do represent meaningful changes, not merely clarifications, and we believe that the draft could be construed to disqualify actuaries who meet the current Qualification Standards. Because of the way that the ED was framed when it was released, we believe that some actuaries have been misled that the proposed changes are merely cosmetic, and thus did not review the ED. Therefore, we believe that no changes should be adopted without first issuing a second exposure draft that accurately describes the proposed changes, with appropriate rationale, and further revises the proposed language to address the specific issues identified within this letter.

Specific comments

Retroactive Disqualification

We note that the transmittal letter of the ED states “This language is not intended to disqualify actuaries who were previously qualified”, and Section 2.1.2 provides that “An actuary need only satisfy the basic education and experience requirement in an area of practice once.” Please confirm that there is no intent to retroactively disqualify anyone who currently qualifies under the current USQS in effect.

The Committee should confirm in a second exposure draft that the intent of Section 2.1(a) is to require current membership in one of the listed organizations. Our subsequent comments assume that is the case.

Membership in Actuarial Organizations

Currently the Qualification Standards require that an actuary “be a Member of the Academy, a

Fellow or Associate of the SOA or the CAS, a Fellow of the CCA, a Member or Fellow of ASPPA, or a fully qualified member of another IAA-member organization”.¹

Revised Section 2.1(a) would remove membership in any actuarial organization other than the Society of Actuaries (SOA), Casualty Actuarial Society (CAS), or the American Academy of Actuaries (Academy) as a basic qualification, as well as exclude membership in non-U.S. actuarial organizations (e.g., the Canadian Institute of Actuaries, or CIA). This revision would require actuaries who are solely members of other organizations (e.g., the CIA, or the Conference of Consulting Actuaries (CCA)), and who are not enrolled actuaries (EAs), to avoid disqualification by joining the Academy, even though the Academy does not provide examinations leading to the Member of the American Academy of Actuaries (MAAA) credential. Membership in the Academy does not in any way, by itself, increase an actuary's competence or professionalism. It is not clear why membership in the Academy alone should be a basis for the basic education qualification requirement, while membership in other organizations that have similar or higher standards for membership are excluded.

We note that all five U.S. based actuarial organizations require their members to adhere to the Code of Conduct, and their members thereby become subject to the Qualification Standards, guaranteeing their compliance with the basic and continuing education requirements and the ASOPs.

Consider an actuary who passes SOA or CAS exams and attains an actuarial designation, has relevant experience, and continues to satisfy CE requirements. That actuary is no less qualified if he or she drops membership in SOA or CAS, but remains subject to the Qualification Standards by virtue of membership in CCA or the American Society of Enrolled Actuaries (ASEA). We believe that having a single set of Qualification Standards and Code of Conduct for actuaries from all organizations (U.S. or non-U.S.) performing work to be used in the U.S. has served the profession and public interest well and should be the continued practice. These proposed changes undermine this objective.

Non-U.S. Actuaries

As another example, consider a U.S. multinational that has operations, including pension plans, in Canada. It is very common for the Canadian pension plan financial statement results under U.S. GAAP to be prepared by a Canadian actuary who otherwise services the Canadian plans. The CIA (as well as other non-U.S. based actuarial organizations) requires their members who prepare work that is to be used in other jurisdictions to comply with the operative standards in those jurisdictions. Under the proposed revisions to the Qualification Standards, such an actuary could not comply without joining the Academy, even though joining the Academy has no immediate or direct effect on the actuary's professionalism or competence to perform the work. This is inappropriate and seems more likely to result in international actuarial organizations rescinding the requirement that their members comply with the local U.S. Qualification Standards than it is to result in non-U.S. actuaries joining the Academy solely to be able to meet the Qualification Standards. We do not believe that

¹ We note that the current standard is not clear as to whether current membership (at the time a Statement of Actuarial Opinion (SAO) is issued) is required, given that this appears in the “basic education and experience” section of the Qualification Standards, and Section 2.1.2 of the current Qualification Standards provides that “An actuary need only satisfy the basic education and experience requirement in an area of practice once.” However, this lack of clarity in the current Qualification Standards is unimportant since an actuary who is not a member of one of these actuarial organizations (e.g., an actuary who is only an enrolled actuary (EA)) is not subject to the Code of Conduct, and thus is not subject to the Qualification Standards or the actuarial standards of practice (ASOPs). (We note however that such an actuary is subject to qualification and regulation by the Joint Board for the Enrollment of Actuaries).

removing such actuaries from the requirements of the ASOPs or the Code of Conduct with respect to work they perform that will be used in the U.S. will best serve the public interest and the needs of those who require these actuarial services.

Similarly, in order to satisfy the requirements of Section 2.1(d) by completing a specialized course of examination (2.1(d)(1)), or having a year of relevant, responsible experience (2.1(d)(2)), the non-U.S. actuary (e.g., a fellow of the CIA) would still need to join the Academy. This has the indirect effect of further promoting Academy membership by making such membership the only path for non-U.S. actuaries performing work in the U.S. to meet the Qualification Standards. If such non-U.S. actuaries do not become members of the Academy, over time there will be no non-U.S. actuaries who meet the Qualification Standards who can serve as the qualified actuary supervising other actuaries seeking qualification under Section 2.1(d)(3) of the proposed Qualification Standards.

Associates of SOA or CAS

We note that the same phenomenon described above for non-U.S. actuaries could occur, under the proposed standard, for career SOA and CAS Associates. In a small company with few actuaries, there may be Associates, but no Fellows, so there may not be actuaries who meet the Qualification Standards who can serve as the actuary who is qualified to supervise the more junior actuary under Sections 2.1(d)(2) or 2.1(d)(3). This represents a substantial change from the current Qualification Standards given that the career Associate must already meet Sections 2.1(b) and (c) (“Be knowledgeable, through examination or documented professional development, of the U.S. Law applicable to the Statement of Actuarial Opinion. “Law” is defined in the *Code of Professional Conduct* as statutes, regulations, judicial decisions, and other statements having legally binding authority.”). Under the current Qualification Standards, the supervising actuary must meet the Qualification Standards, which is entirely appropriate, but career ASA/ACAS are also able to meet the Qualification Standard.

Enrolled Actuaries

Interaction of Sections 2.1 and 2.1.1

We note that the intention of the proposed “technical clarifications” is somewhat unclear with respect to EAs, due to the combination of the language in Section 2.1(a) and in Section 2.1.1(a). Section 2.1(a) includes the EA credential as a means of satisfying the requirements of that subsection, without limitation. However, Section 2.1.1(a) appears to narrow that to “Solely for purposes of Statements of Actuarial Opinion that ERISA mandates an Enrolled Actuary to issue (funding calculations and Schedule SB filings attached to the annual government filing of Form 5500, for example), an Enrolled Actuary is deemed to satisfy Section 2.1 (a) through (d).” It is confusing to say in Section 2.1.1(a) that an EA is “deemed to satisfy Section 2.1(a)” “solely for purposes of Statements of Actuarial Opinion that ERISA mandates an Enrolled Actuary to issue”, when Section 2.1(a) indicates that an EA satisfies 2.1(a) without any limitation as to the type of work. We presume that Section 2.1(a) controls, so that an EA would satisfy Section 2.1(a) for any type of work (subject of course to the other requirements of knowledge, experience and relevant CE) but the conflicting wording could easily be interpreted differently. To clarify this, the wording “an Enrolled Actuary is deemed to satisfy section 2.1 (a) through (d)” in Section 2.1.1(a) should be changed to “an Enrolled Actuary is deemed to satisfy section 2.1 (b) through (d).”

If in fact it was intended that an actuary with only the EA credential satisfies Section 2.1(a) ONLY with respect to work that ERISA requires an EA to perform (i.e., if Section 2.1.1(a) takes precedence over Section 2.1(a)), we note that this represents a substantive change from the current Qualification Standards. Currently, the EA can be a member of any of the five U.S. based actuarial organizations

that have adopted the Code of Conduct and thus be required to satisfy the Qualification Standards, but under the revisions the EA who is not an FSA/FCAS or ASA/ACAS would have to join the Academy to satisfy Section 2.1(a) to provide SAOs related to pension work. We note that such a provision would likely have undesirable consequences.

As discussed previously (see Membership in Actuarial Organizations), there is no material difference in the education requirements for membership in the Academy, CCA or ASEA as it relates to EAs.

We urge the Committee to issue a second exposure draft with clarifications or a clearly articulated rationale for changing the Qualification Standards in this regard.

Other Changes Affecting EAs

In the current Qualification Standards, Section 2.1.1 simply provides that “Enrolled Actuaries are deemed to meet the basic education and experience requirement of the General Qualification Standard in the pension practice area.” Based on the heading, the “basic education and experience requirement” is all of Section 2.1. Given that EAs are subject to rigorous examinations and experience requirements by the Joint Board for the Enrollment of Actuaries (JBEA), and continuing education (CE) and ethics/professionalism requirements under the JBEA regulations, we believe the current standard is appropriate.

The proposed revisions would now require the EA to satisfy Sections 2.1(c) and (d) for non-“mandated” pension related work. While that is a change and should be described as such, we have no objection to an EA being subject to Section 2.1(c).

However, under the proposed revisions, an EA without a FSA/FCAS credential would also need to satisfy the “three-year supervision” requirement of Section 2.1(d)(3). This appears to be a material change and not a clarification. This should be presented clearly with explained rationale in a second exposure draft.

SAOs that ERISA Mandates an EA to Issue

We recognize that the ED indicates that an EA is deemed to satisfy Sections 2.1(a) through (d) for “Statements of Actuarial Opinion that ERISA mandates an Enrolled Actuary to issue”. In practice, we believe this is too limiting and should be broadly changed to encompass any SAO related to ERISA pension plan compliance. There are very few things that ERISA actually mandates be done by an EA (primarily the Schedule MB or SB certifying the funding calculations, and compliance thereof, the certification of liabilities for Pension Benefit Guaranty Corporation (PBGC) variable rate premium purposes, and certain funded status certifications). Despite this, EAs commonly perform many other types of ERISA-related services with respect to pension plans.

Activities that ERISA does not require be performed by an EA, and yet are virtually always performed by EAs, include (but are not limited to) the following:

- Calculating the assets that go to each plan in a plan spinoff
- Determining benefit protections for the different groups in plan mergers
- Determining of multiemployer plan withdrawal liability
- Determining whether plan amendments can take effect, benefits can continue to accrue, or plant closing benefits (and other special termination benefits) can be paid for underfunded plans
- Performing nondiscrimination testing
- Performing testing related to IRC Section 415 limits
- Performing top-heavy testing
- Performing accrual rule testing
- Designing plans that comply with ERISA qualification requirements

Comment #133—10/20/2020—11:53 a.m.

CE on each these topics counts toward the core credit CE requirements under the JBEA regulations.² These topics are also on the JBEA exam syllabus and tested on the enrollment exams, and EAs are qualified to represent clients before IRS on these matters.

Other common functions performed by EAs under the current Qualification Standards that would now require satisfaction of Sections 2.1(c) and (d) include accounting and expert testimony work.

To reiterate, the changes made specifically to language affecting EAs is not clear and warrants a second exposure draft with additional clarifications.

Thank you for this opportunity to comment.

² 20 CFR 901.11(f)(1)(i) defines core subject matter as “program content and knowledge that is integral and necessary to the satisfactory performance of pension actuarial services and actuarial certifications under ERISA and the Internal Revenue Code.”

Kenneth K. Lining, FCA, MAAA, EA
Max Diaz
Andrew Forgrave, EA, MAAA, MSEA, FCA
Wilfredo J. Gaitan FCA, ASA, EA, MAAA, CCP
Edward F. Groden, FCA, ASA, EA, MAAA
Meryl Feigenbaum, ASA, EA, MAAA
Andrew D. Taggart, ASA, MAAA
Kevin T. Cammarata
Shawn Carlson
Mark A. Barrett, EA, FCA, MAAA, MSPA
Griffin Lothrop, FCA, ASA, EA, MAAA
Brian Boring
Alan T. Nahoum, EA, MAAA, FCA
Michael S. Clark, FSA, FCA, EA, MAAA
Christian Veenstra, ASA, FCA, MAAA, EA
John Lowell, ASA, FCA, MAAA, EA
Justin Hornburg, FCA, FSA, MAAA
Xinmeng Yao
Cindy Low
Lorraine Dorsa, FCA, MAAA, MSPA, EA, CEBS
Michael L. Frank, ASA, FCA, MAAA
Corlan Fawcett, A.S.A., E.A., M.A.A.A.
Gregory M. Stump, FSA
Annie C Brown
Douglas Levit, FSA, MAAA, FCA
Ronaldo Cifra Ramos, ASA, FCA, MAAA
Zihua Liu, PhD, EA, FCA, MAAA, MSPA
Margot Kaplan, FCA, MAAA, ASA
Parker Elmore, ASA, FCA, EA, MAAA
Edward M. Pudlowski, ASA, FCA, MAAA
Casey Shork
Tomasz Serbinowski, FSA, MAAA
Charles H. McLaughlin, F.S.A., M.A.A.A., F.C.A, E.A.
Wylmina Hettinga, EA, MSPA, FCA
Tom Bakos, FSA, MAAA
Donald J. Segal, FCA, FSA, EA, MAAA
William R. Hallmark, ASA, FCA, EA, MAAA
Gene H. Wickes, FSA, FCA
Joan Boughton, FSA, EA, FCA
Dan Hoffman, FSA, MAAA, FCA
Wendy Londa, ASA, EA, FCA, MAAA
Robert F. Geer
Audrey K Comisky, ASA, MAAA
Bob Heitman
David M. Davala
Gregory S. Pence, FSA, FCA, MAAA
Michael G Ibrahim
Lauren R. Okum, ASA, EA, MSEA
Kevin J. Donovan, CPA, EA, FSEA, FCA

Mackay Moore, ASA, MAAA
Stephen M. Coleman, FSA, EA, MAAA, MSEA
Robert Bostian, FSA, MAAA, FCA, MSEA, EA
G. Neff McGhie, III, MSPA
Norman Levinrad, EA, FSPA, MAAA
Lee James, FSA, FCA, EA, MAAA
Mark F. Olson, FSA, FCA, MAAA
Susan C. Evans
Kevin Morrison, ASA, EA, FCA, MAAA
Paul B Zeisler, MAAA, FCA, ASA, EA
Joseph A. Nichols, ASA, EA, MSPA
Felix Okwaning, MAAA
Jason Gay, FSA, FCA, MAAA, EA
Steve J. Persons, MAAA, MSEA, EA, CPA
Constance Dalmadge Hall
Leslie John Lohmann FCA, MAAA, FSA, EA, FCIA
Brad Ryder FCA, MAAA, ASA
Gail R. Steward, FCA, EA, MAAA
Bruce C. Gaffney
Daniel W. Boland
Nolan S. Frank, M.S.P.A., E.A.
Van Phan, FSA, MAAA
Adam K. Pagenkopf, EA, MSEA
Stanley E. Sells
Carmen Estarellas
James C. Shake
Dennis M. Reddington, MSPA, MAAA
Jaredd Simons, ASA, MAAA
Irene Lee, MAAA, MSEA
John Herzfeld, FCAS, MAAA
Christine M. Joyce
Lisa A. Pfautz, EA, MSEA, ASA
Thomas Lowman, FSA, EA, MAAA, FCA
Corey Berger
Patricia Rotello, FSA, FCA, EA
Richard H Bailey III, MAAA, FSA, FCA
John P. Frederick, ASA, EA, MAAA
Ronald Roth, EA, AAA, FCA, MSPA
Mark A. Cohen
Glenn R. Balling
Kelly W. Grebinsky
Matthew J. Gludt, ASA, EA
Christopher Snell
Elaine Corrough
Thomas C. VanDeGrift, MSEA, MAAA
Dale H. Yamamoto
Thomas A. Swain, FCA, MAAA, EA, FSA
Sadie Pourfathi, QPA, ERPA
David V. Pappalardo, FSA, EA, FCA, MAAA
Jay Lorentson, MSEA
Nadine Orloff, FSA, EA, MAAA, FCA

Jeremiah D. Reuter, ASA, MAAA, MS
Stephen F. Dolce, EA, MSEA
Elizabeth Wiley, FCA, FSA, EA, MAAA
Melissa R. Moskovitz
Bonnie Maxie
James J. Rizzo, ASA, MAAA, FCA, EA
Theora P. Braccialarghe
John E. Bartel
Judith A. Kermans, EA, MAAA, FCA
Jennifer M. Borregard, EA, MAAA, FCA
William H. Turner, FSA, EA, FCA
David T. Kausch, FSA, EA, MAAA
Michael McKnight ACAS, MAAA
Jeanette R. Cooper, FSA, FCA, MAAA, EA
Jaakob Sundberg FSA, MAAA
Andy Rallis, FSA, MAAA
Andrew J. Herman, FSA, MAAA
Benjamin Cohen, FSA, MAAA
Jeffrey L. Smith, FCA, MAAA
Aaron M Friedman, MSPA, MAAA, EA
Kurtis Thompson, ASA, MAAA
Joan P. Ogden, FCA, MAAA
David Pratt Ward, F.C.A., A.S.A., E.A.,
M.A.A.A.
Ryan S. Carney, FSA, MAAA, EA
Frank Yeager, FSA, MAAA, FCA
Steven M. Mendelson, EA, FCA, MAAA,
MSPA
James D. Anderson, FSA, EA, FCA, MAAA
Lawrence Stone
Paul Withington, FSA, MAAA, EA
Mason Shea, FSA, MAAA, FCA
John Winter, ASA
Narendra R. Ramdass, ASA, MAAA, FCA
Earlene L Young, MAAA, FCA, Enrolled
Actuary
John R. Governale, FSA, MAAA, FCA
Sandy Vaivads Pangburn, ASA, EA, FCA,
MAAA
George T. Dunlap IV
Mitsuyasu Nishiwaki, FSA, FCA, EA
Virginia C. Wentz, EA, FSEA, CPC
Elena Will
Hector D. Gaitan
Timothy J. Robson, FIA, ASA
Karen Dillman Sebach, EA, MSEA
Steven B. Goldberg, ACAS, MAAA
James D. Burke, FSA, EA, FCA, MAAA
Ted Windsor, A.S.A.; E.A.; M.A.A.A.; F.C.A.
Richard A. Young, ASA, EA, MAAA, FCA
John Michael Polasky
Heidi Barry

Allison Reynolds, ASA MAAA ACA
Maria M. Sarli, FCA, FSA, EA, MAAA
Jonathan P. Lincoln, FIA, EA
Daniel J. Carter, FCA, MAAA, EA
Julie Hall, ACAS, MAAA, CPCU
Adam J. Reese FSA, FCA, MAAA, EA
Colin England, FSA, EA, FCA
Ellen L. Kleinstuber, FSA, FCA, FSEA, EA,
MAAA
David Dunlap ACAS, MAAA
Mehdi Riazi FSA, EA, FCA, MAAA
Craig P. Rosenthal, FSA, EA, FCA, MAAA
Kathleen M. Potter, FSA, EA, MAAA, FCA
Margaret A. Lacek, EA, FSA, FCA, MAAA
Robert W. Hazy, EA, FCA, MAAA
Piotr Krekora, FCA MAAA ASA EA
J. Clinton Wall, MAAA, MSPA, CEBS, EA
Tanya Rizzuto, FSA, EA, FCA
Deborah K. Brigham, FCA, ASA, MAAA, EA
Jeremy P. Olszewski, FSA, EA, MAAA, FCA