October 28, 2020

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

Dear Sir or Madam:

This letter provides Willis Towers Watson's comments on the Exposure Draft (ED) of the proposed revisions, issued in September 2020, to the *Qualification Standards (including Continuing Education Requirements) for Actuaries Issuing Statements of Actuarial Opinion in the United States (USQS)*.

Willis Towers Watson is a leading global professional services company that employs approximately 45,000 worldwide, over 1,100 of whom are members of U.S. actuarial bodies subject to the Qualification Standards and approximately 600 of whom are enrolled actuaries (EAs). We provide actuarial and consulting services to more than 1,700 defined benefit plans in the U.S, as well as numerous defined benefit plans outside the U.S. with respect to which non-U.S. actuaries may be subject to the Qualification Standards. Our U.S. credentialed actuaries also include actuaries who provide other types (i.e., non-pension) of actuarial services.

The undersigned have prepared our company's response with input from others in the company. We appreciate the opportunity to comment on the ED.

General comments

The transmittal memorandum in the ED indicated

> "Section 2.1 has been rewritten to better describe the basic education necessary for actuaries who practice in the US. This language is not intended to disqualify actuaries who were previously qualified…"

We do not believe that the rewritten language achieves this stated goal. Our overriding comment is that the language as currently drafted would require actuaries to be members of the American Academy of Actuaries (the Academy) in order to comply with the USQS in many situations where that membership is not currently required. Requiring Academy membership in this fashion is not consistent with the goal noted, and does not improve the qualifications of actuaries. As a result, we do not support the amendments to the USQS as currently drafted. We request changes to the draft so that the provisions for basic and continuing education requirements do not change, as indicated in the transmittal memorandum.

Specific comments

Transmittal memorandum

In addition to the goal outlined above, the transmittal memorandum also indicates:

> Sections 2.1.1 and 2.2.8 have been rewritten to better describe the required basic and continuing education for Enrolled Actuaries with respect to the types of work performed by the actuary.

Our comments below explain why we believe (i) the changes to section 2.1 WOULD disqualify many

actuaries, including non U.S. actuaries preparing work to be used in the U.S., who are currently qualified and (ii) the revisions with respect to EAs do not "better describe", but rather fundamentally change, the "Basic Education and Experience Requirement" in section 2.1. We note that the revisions would permit actuaries to avoid disqualification by joining the Academy. However, other actuarial organizations (both U.S. and non U.S.) currently require their members to comply with the Qualification Standards when preparing work to be used in the U.S., which guarantees their basic education, continuing education, and adherence to the Code of Conduct and actuarial standards of practice (ASOPs). We believe that joining such other organizations should avoid disqualification as is the case under the current USQS.

If there was an intention to provide legacy protection to current practitioners, we do not believe that is provided for in the text. However, we do not support a grandfather only option and are opposed to these changes.

The transmittal memorandum poses two specific questions.

> **Question 1** - The goal of each of the adjustments to the language related to the basic education under the general portion of the Qualification Standards was to add clarity. Are there particular considerations of basic education that are not clear?
>
> **Question 2** - The goal surrounding the updated language related to the basic and continuing education for Enrolled Actuaries was to add clarity but not to change the requirements. Is this clear in the updated language?

Again, we do not believe that the proposed changes simply "add clarity"; rather they fundamentally change the rules of the game. We believe this is not only inconsistent with the goals as noted, but is also inappropriate.

Section 2.1(a)

Setting aside the EA case for a moment (i.e., first considering only actuaries who are not EAs), the basic purpose of Section 2.1(a) is to require membership in an actuarial organization. Under the current language, a member of any of the five U.S. based actuarial organizations that have adopted the Code of Conduct (and whose members are therefore governed by the Qualification Standards), as well as a fully qualified member in any full member organization of the International Actuarial Association (IAA), satisfied section 2.1(a). Under the ED, only membership in the Academy, the SOA, or CAS enables a non-EA actuary to satisfy the Qualification Standards.

It is clear that the Qualification Standards should require an actuary to have received certain basic education related to the subject of the Statement of Actuarial Opinion (SAO), but an actuary could not satisfy either section 2.1(c) or section 2.1(d) of the ED without doing so. It is also clear that the Qualification Standards should require relevant continuing education (CE), but that is covered by Section 2.2. Finally, it is clear that an actuary should have experience related to the topic of the SAO, but that is covered by Section 2.1(d).

The current language in Section 2.1(a) of the ED appears to require continuing membership in one of the AAA, SOA or CAS, and ignores as a qualification membership in other actuarial organizations whose members are currently subject to the Qualification Standards. For example, an actuary who passes SOA or CAS exams and attains an actuarial designation, has relevant experience, and continues to satisfy CE requirements, is no less qualified if he or she drops membership in any of these three organizations, but remains subject to the Qualification Standards via membership in another actuarial organization which has adopted the Code of Conduct. While we do see some rationale for treating SOA or CAS membership differently (i.e., they provide credentials through examination), we see no rationale for Academy membersip being the sole non-exam issuing organization whose membership would avoid disqualification.

Non-U.S. Actuaries Performing Actuarial Services in the U.S.

The exclusion of IAA member organizations is also a serious concern. As a simple 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 Canadian Institute of Actuaries (CIA) 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 effect on the actuary's professionalism or competence to perform the work. This is inappropriate, and could result in international actuarial organizations rescinding the requirement that their members comply with the local U.S. Qualification Standards. We do not believe that 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. is in the best interests of the users of their actuarial services.

Similarly, in order to satisfy the requirements of section 2.1(d) by completing a specialized course of examination (2.d(1)), or having a year of relevant, responsible experience (2.d(2)), the non-U.S. actuary (e.g., a fellow of the CIA) would need to join the Academy, even though joining the Academy has no bearing on qualifications ("Attain (i) fellowship in the CAS or SOA, or (ii) the highest possible actuarial designation of a non-US actuarial organization and be a member of the Academy."[emphasis added]). And while 2.1(d)(3) does not directly require such an actuary to become an Academy member, it will indirectly do so via the need for three years of review. That review must be conducted by an actuary who is qualified to issue an SAO under the ED, and over time the only way for non-U.S. actuaries to be qualified to perform that review under the ED would be to become Academy members The same comment applies to actuaries with the EA designation who do not join the Academy (for example, they join the American Society of Enrolled Actuaries, or ASEA). Again, joining the Academy provides no indication of improved professionalsm or competence than if the actuary was already subject to the Qualification Standards.

ASAs who are not FSAs

We note that the same phenomenon described above for non-U.S. actuaries could occur, under the ED, for actuaries who attain Associateship status in the SOA (ASA) but not Fellowship(FSA). In a small company, there may be ASAs (or ASAs/EAs), but no FSAs. So there may not be actuaries who meet the Qualification Standards under the ED who can serve in the review capacity for three years under 2.1(d)(3). It is common to have experienced pension actuaries who stop taking SOA exams once they become an ASA. This problem does not exist under the current USQS and could be solved under the ED only by actuaries joining the Academy. However, as noted elsewhere in the letter, we do not believe that this improves the professionalism or competence of the actuary and should not be a new requirement.

Enrolled Actuaries

With respect to EAs, section 2.1(a) appears to indicate that an EA automatically satisfies section 2.1(a). However, section 2.1.1(a) indicates that "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)." The limitation on the types of SAOs covered in section 2.1.1(a) is a new requirement and differentiating the basic education and experience requirements for SAOs in section 2.1.1(a) from those in section 2.1.1.(b) is a change from the prior USQS, is inconsistent with the stated goals of the ED and is inappropriate.

Also, it is confusing to say in section 2.1.1(a) that an EA is "deemed to satisfy 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 qualification as to the type of work. Literally, 2.1(a) would seem to control, 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 EA-only 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 change and is inapprpriate. Previously, the EA-only could be a member of any of the five U.S. based actuarial organizations that have adopted the Code of Conduct and thus require their members to satisfy the Qualification Standards, which we believe is important to support continued professionalism and competence of EAs.

We also note that the carve out for "Statements of Actuarial Opinion that ERISA mandates an Enrolled Actuary to issue" is a near-meaningless exception in the real world. There are very few things that ERISA actually mandates be done by an EA (primarily the Schedule MB or SB with the funding calculations, 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 services with respect to pension plans. CE on these topics counts toward the CE requirements under the regulations of the Joint Board for the Enrollment of Actuaries (JBEA), and most of those topics are also tested on enrollment exams.

The activities that ERISA does not actually require to be performed by an EA, and yet are virtually always performed by EAs and are tested in the enrollment exams, 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 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 under IRC section 436
- 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

An EA who is limited to the functions that ERISA specifically requires an EA to do cannot realistically practice except in an extremely limited role.

We note that an EA is subject to examination, CE and ethics requirements under the JBEA regulations and, as discussed above, the exception that the proposed Qualification Standards carves out for things that ERISA requires an EA to do is really no exception at all. The ED appears to require EAs to join the Academy to satisfy the USQS, even though joining the Academy has no bearing on the EA's professionalism, training, experience, CE or the applicability of the Code of Conduct. This is inconsistent with the stated goals of the ED and does not improve professionalism. In fact, instead of EAs actually joining the Academy if this provision continues as written, there may be several other consequences of this provision, including:

(a) Many EAs may be persuaded to drop, or not seek, membership in any actuarial organization that would (under current rules) bring them under the Qualification Standards and Code of Conduct (since they would still be unable to say that they meet the Qualification Standards without joining the Academy) or
(b) In order to avoid (a), other actuarial organizations may decide to no longer require that their members adhere to the Qualification Standards promulgated by the Academy, and adopt their own standards. Once an actuary is no longer under the Code of Conduct, he or she is not subject to the Qualification Standards or the actuarial standards of practice (ASOPs). While he or she is still subject to the JBEA regulations, and thus must still demonstrate competence and integrity, we do not believe the interests of the profession are furthered by language in the ED which could encourage greater numbers of actuaries to exit coverage by the Qualification Standards, or by encouraging other actuarial organizations to adopt different qualification and other standards.

Section 2.1.1

We believe the definition of Enrolled Actuary is not correctly reflecting the regulations. An Enrolled Actuary needs to do more than just have met the requirements of Title III, Subtitle C (not Section C) of the Employee Retirement Income Security Act of 1974 (ERISA). The website of the Joint Board for the Enrollment of Actuaries states that an Enrolled Actuary is "any individual who has satisfied the standards and qualifications as set forth in the regulations of the Joint Board for the Enrollment of Actuaries and who has been approved by the Joint Board to perform actuarial services required under the Employee Retirement Income Security Act of 1974 (ERISA)."

Section 2.2.7

We believe this section (as well as section 2.2.8 in the current Qualification Standards) similarly misunderstands ERISA as it relates to pension actuaries, for the reasons discussed above. We believe it is inappropriate to substitute the Qualification Standard's CE requirement for the JBEA's requirements with respect to any actuarial services that relate to topics that are on the JBEA exam syllabus and are recognized for CE purposes by the JBEA. We also note that section 2.1(c) also requires basic knowledge of the subject of the SAO when it provides "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."

Miscellaneous comments

The reference to 2033 in the example in section 2.2.2 needs to be changed to 2023. Also, the reference in section 2.2.2 to Section 2.2.7 should be to Section 2.2.6.

The reference to exams "with U.S.-specific content" in section 2.1(a) could be misinterpreted, since, for example, exams given by the SOA do not include only U.S. content. It might be clearer with a phrase like "includes applicable U.S.-specific content."

Section 2.1 would be more clear if the first sentence of 2.1 ended with "the actuary must meet the criteria in (a), (b), (c), and (d) below:", rather than (d) starting with "In addition to (a), (b), and (c) above."

In section 2.1(d), we suggest that "in any particular area of actuarial practice" be struck from "In addition to (a), (b), and (c) above, in order for an actuary to issue Statements of Actuarial Opinion ~~in any particular area of actuarial practice~~, an actuary must meet one of the following with respect to the particular subject

of the Statement of Actuarial Opinion:"; the final clause in the sentence makes clear that it is the subject of the particular SAO that is important.

We note that the ED does not comply with Appendix 3 Section III (Format) in that it does not provide the "Address to which comments should be submitted". We ask that any comments delivered to the Academy by mail or sent by e-mail (properly labelled as pertaining to the Qualification Standards Exposure Draft) by October 30, 2020 to Brian Jackson (General Counsel and Director of Professionalism; jackson@actuary.org) or Erica Kennedy (Assistant Director of Professionalism; kennedy@actuary.org), or other Academy staff or members of the Committee on Qualifications, be treated as properly delivered to be considered by the Committee on Qualifications.

More attention should be paid to the examples in Appendix 1 prior to the next draft as some do not appear to be relevant today. In particular:

- I(a) – change "may or may not" to "might or might not"
- I(b) – The third sentence should refer to the draft as "might be an SAO" and not "is an SAO" since it continues to discuss when it is not an SAO. Also, in the fourth sentence, this also "might be an SAO"; for example, if the Principal cancels the project after receipt of the draft and says not to do any more work on it, the draft should continue to not be an SAO.
- II (A) – since these are all supposed to be an SAO and II(B) cover those that might contain an SAO, several items should move from II(A) to II(B), including:
    - Item 20 – supporting reports could be an SAO but a supporting report may not include anything actuarial in it. Because of that you may also want to add "(depending on content and intent)" like you do for several other items that might contain an SAO.
    - Item 28 – this specifically states it might be an SOA depending on content and intent
    - Item 29 – the sale price of a non-insurance company that has no significant actuarial obligations, but might involve an actuary in areas such as defined contribution plan obligations, might not have an SAO
    - Item 30 – this is similar to item 29. In addition, it is not clear whether this is referring to merger/spinoff of a company or of something else, like of two pension plans.
    - Item 31 - this specifically states it might be an SOA depending on content and intent
    - Item 53 – pension benefit calculations do not always involve actuarial concepts so they are not always an SAO.
- II(A) – several items should potentially not have a "P" under area of practice. Including
    - Item 16 – pension actuaries do not generally provide opinions on non-guaranteed elements
    - Item 42 – This should also reference "P" as an area of practice since pension actuaries do determinations under ASC 712
    - Intem 51 - This should also reference "P" as an area of practice since pension actuaries do determinations under ASC 965, sometimes cosigning with an actuary in the health practice area
- II(A) – item 39 should refer to the appropriate section of the IRC.
- II(E) – several items might be an SAO depending on content and intent, including items 3 and 4.

Please let us know if you have any questions. We would be happy to meet with you to further discuss this.

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