MERCER
Human Resource Consulting

1166 Avenue of the Americas
New York, NY 10036-2708
212 345 7000 Fax 212 345 7414
www.mercerHR.com

September 27, 2004

Internal Revenue Service
Attn: SE:OPR (Joint Board Regulations)
1111 Constitution Avenue, NW
Washington, DC 20224

Subject:
Comments on Possible Revisions to Regulations Governing Actuarial Services under ERISA

To Whom It May Concern:

Mercer Human Resource Consulting (Mercer) has reviewed the Joint Board for the Enrollment of Actuaries (Joint Board) solicitation for comments published in the Federal Register on June 30, 2004. In response, we respectfully submit the following comments and suggestions. We appreciate the opportunity to participate in the process of your development of proposed regulations to amend those found at 20 CFR Part 901, last amended in 1988. Our comments are numbered to correspond to the item numbers stated in the solicitation.

(1)Procedures and Conditions for Enrollment and Renewal of Enrollment

- We believe that to be an enrolled actuary, an individual should be required to fulfill the pension actuarial knowledge requirement by passing an examination that includes the selection of assumptions, including the effect that a plan's asset mix might have on the selection of the investment return assumption.

- We agree that an Enrolled Actuary should be required to satisfy certain Continuing Professional Education (CPE) requirements and to so certify. As part of the CPE certification process, we recommend that the Enrolled Actuary be required to provide information regarding whether or not he/she has been disciplined or is under disciplinary review by any professional body. We believe this information should be considered by the Joint Board in the renewal process.

- In light of the fact that Code Sections 401(h), 419, 419A and 420 involve multi-disciplinary expertise, we recommend the following:

- With respect to those aspects of Code Sections 401(h), 419A and 420 that involve prefunding of retiree medical and life insurance benefits, an Enrolled Actuary and a qualified health actuary working together should be permitted to work before the IRS, i.e., a health actuary who is not an Enrolled Actuary should be permitted to practice before the IRS in these areas if teamed with an Enrolled Actuary.

- If the Enrolled Actuary practices for a plan that has Code Section 401(h)/419/419A/420 elements, the Enrolled Actuary must complete as part of his/her continuing education an appropriate number of credits on that material during the re-enrollment cycle.

- Aspects of Code Section 419 and 419A that do not involve prefunding of retiree benefits (e.g., establishing appropriate reserves for incurred but unpaid LTD claims or incurred but unpaid medical year claims), a qualified health actuary should be permitted to practice before the IRS without teaming with an Enrolled Actuary.

- In both cases, a qualified health actuary would be an actuary who is a Member of the American Academy of Actuaries and who satisfies the Academy's qualification standards for statements of actuarial opinion in the health practice area.

- For a variety of reasons, actuaries have come under increasing scrutiny in recent years. As a result, it is vitally important that Enrolled Actuaries be continually reminded of the importance of maintaining the highest level of professionalism and exhibiting the highest level of integrity in the conduct of their work. Accordingly, we believe that of the 36 continuing education credits that must be completed in a three-year cycle, a minimum of three such credits cover professionalism and/or ethics topics.

- Mercer Human Resource Consulting is a Sponsor of programs that qualify for CPE credits, as defined in Section 901.11(g) of the Joint Board's Regulations. We recommend that this section of the regulations be amended to permit any Sponsor to submit an outline covering program material to the Joint Board to obtain the Joint Board's opinion as to whether the continuing education credits covers Core or Non-core subject matter.

- We believe that the experience requirement for initial enrollment works well and is not in need of any changes at this time.

(2)Continuing Professional Education (CPE) Programs

- We believe that the delineation between Core and Non-core subjects no longer serves a useful purpose in the markets being served. With today's discussions focusing on a wide variety of financial economics as they apply to retirement programs, it is extremely important for the Enrolled Actuary to know and be able to understand and intelligently discuss these issues with plan sponsors. The ability to pigeon-hole these concepts into Core or Non-core categories no longer has the relevance it previously had fifteen years ago when the regulations were first promulgated. It is simply expected that core competencies will be maintained at the professional level.

- In addition to those topics currently listed as acceptable Non-core topics (computer programs, investment and finance, etc.), we recommend that additional topics be accepted as valid for CPE credit. These would include:

  - Employer accounting for other post-retirement benefits, including FAS 106 calculations
  - Issues associated with post-retirement aspects of Code Sections 401(h), 419, 419A and 420, including retiree medical plan design, funding, accounting, assumption setting, cost methods, etc.
  - Social Security and Medicare benefits
  - International retirement benefits (design, funding and accounting)
  - Financial economics
  - Proposed legislative changes, such as proposals to revise current qualified pension plan minimum funding rules, PBGC coverage and premiums, etc.
  - Pension valuation software programming and use
  - Computer program training, e.g., advanced Excel training

  The second to last comment under Section (1) above would not apply if the Regulations are modified to eliminate the delineation between Core and Non-core subjects as discussed immediately above.

- If the current Regulations are not modified to eliminate the delineation between Core and Non-core subjects, then we recommend that the Joint Board provide further information that distinguishes between Core and Non-core subjects. Additional guidance will be helpful to both program sponsors and Enrolled Actuaries satisfying specific requirements, to the extent that the distinction of Core and Non-core subjects must be continued. This could be part of the updated Regulations themselves or take the form of supplemental guidance issued by the Joint Board. Such additional guidance should address subjects typically discussed at large professional actuarial meetings, among which are those listed on the prior page.

- If the current Regulations are not modified to eliminate the delineation between Core and Non-core subjects, then we recommend that the Joint Board either reduce the number of Core credits required in a three-year cycle, especially for experienced Enrolled Actuaries (e.g., those who have been Enrolled Actuaries for at least six years), or include more topics as Core subjects.

- With recent technological advances, the use of webcasts has become widespread as a means of providing continuing education. Accordingly, the section of the Regulations discussing Teleconferencing should be modified to explicitly permit the use of such webcasts. These webcasts trigger a number of issues that we recommend the Joint Board address, including:

  - Guidance should be provided to document "attendance" by individuals who "attend" webcasts alone, e.g., at their computer terminal, but where at least three individuals (other than the instructor, discussion leader or speaker) simultaneously "attend" that webcast, including those at other sites.
  - Current attendance requirements can continue to be used to demonstrate "attendance" at a webcast where more than one individual is present in a single location.

- We recommend the Regulations be modified to make acceptable CPE credits for computer-based self-study programs, provided appropriate safeguards and mechanisms are in place to validate participation by the Enrolled Actuary.

- With the advent of electronic storage of documents and individuals' ability to retrieve those documents, the requirement that handouts be kept by the Enrolled Actuary must be changed. The current requirement is excessively burdensome on the Enrolled Actuary, wasting valuable file space with handouts that may never be viewed again. We recommend that the Sponsor be required to keep copies of the session materials, but make them accessible in electronic form to the Joint Board, should they ever need to be reviewed or audited for content.

- In recognition that future technological advances are almost certain to occur, the Regulations need to allow for a Sponsor to apply to the Joint Board for approval to use those technologies. Furthermore, the Joint Board should have the authority to authorize the use of those emerging technologies, with acceptance of the technology being communicated to the practicing world via a general announcement.

- Compliance with ongoing continuing education requirements should be independent of the size of the firm for which the Enrolled Actuary works. The public's trust requires that Enrolled Actuaries provide quality, professional services and different continuing education requirements for different size firms would serve to compromise this standard.

(3)Waiver of the CPE Requirement

- We recommend that the list of reasons for which a waiver from the continuing education requirements should be considered needs to be expanded to include maternity and paternity leaves.

(4)Types of Enrollment Statuses

- Under current regulations, an individual who is placed on inactive status must effectively renew his/her enrollment within one three-year enrollment cycle. We recommend that an individual who leaves the workforce for an extended period of time, regardless of the reason for doing so, should be permitted to go into inactive status for a maximum of two three-year enrollment cycles. That individual would then have to "back fill" any missing CPE requirements; at a maximum, this would, by the end of his/her inactive status, require the individual to complete 108 hours of continuing education credits, 36 for each inactive three-year enrollment cycle and 36 for the enrollment cycle immediately preceding the date as of which the individual goes into active status (based on the current 36 hours per cycle requirement). Any individual who fails to complete the necessary "back fill" will need to follow current re-enrollment procedures.

- Applications for a waiver of the continuing education requirements should be accepted during the normal enrollment renewal process, subject to the Joint Board's having the discretion to accept late filings for good cause.

- A category of "Retired" should be created for individuals who request that they be so categorized. We recommend that the following guidelines apply to such Retired Enrolled Actuaries:

  - Any retired individual, as long as he/she has not been disciplined by or is not under disciplinary review by any professional body, should be permitted to use an honorific appending his/her Enrolled Actuary status to indicate his/her retired status (e.g., EA-Ret). Such an individual would not be permitted to sign certifications requiring an Enrolled Actuary's signature.

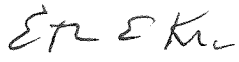
  - Any individual who has been retired for three or more three-year enrollment cycles would have to go through the current re-enrollment procedures. However, if the individual has been retired for less than three three-year enrollment cycles, the same ability to "back fill" any missing CPE requirements as is recommended above for those in inactive status would apply.

(5)Standards of Conduct, Performance and Practice

- We recommend that the Joint Board coordinate with other actuarial or governmental bodies, e.g., the IRS or PBGC, so that if any other body finds that an Enrolled Actuary has violated the standards of conduct, performance or practice relating to the performance of actuarial services, including all applicable regulations and revenue rulings, the respective body will refer the offending individual to the Joint Board for possible suspension or termination of his/her enrollment.

Thank you for the opportunity to provide our comments concerning this matter. Please feel free to contact me at 212 345 7125 if you have any questions concerning these comments or if you wish to discuss them further.

Sincerely,



Ethan E. Kra, F.S.A.
Chief Actuary-Retirement