

#### **§ 901.47**

upon not less than 10 days written notice to the other party, before any officer duly authorized to administer an oath for general purposes or before an officer or employee of the Department of the Treasury, the Department of Labor, the Pension Benefit Guaranty Corporation, or the Joint Board who is authorized to administer an oath. Such notice shall state the names of the witnesses and the time and place where the depositions are to be taken. The requirement of 10 days notice may be waived by the parties in writing, and depositions may then be taken from the persons and at the times and places mutually agreed upon by the parties. When a deposition is taken upon written interrogatories, any cross-examination shall be upon written interrogatories. Copies of such written interrogatories shall be served upon the other party with the notice, and the copies of any written cross-interrogatories shall be mailed or delivered to the opposing party at least five days before the date of taking the depositions, unless the parties mutually agree otherwise. A party upon whose behalf a deposition is taken must file it with the Administrative Law Judge and serve one copy upon the opposing party. Expenses in the reporting of depositions shall be borne by the party at whose instance the deposition is taken.

#### **§ 901.47 Transcript.**

In cases where the hearing is stenographically reported by a Government contract reporter, copies of the transcript may be obtained from the reporter at rates not to exceed the maximum rates fixed by contract between the Government and the reporter. Where the hearing is stenographically reported by a regular employee of the Department of the Treasury, the Department of Labor, the Pension Benefit Guaranty Corporation, or the Joint Board, a copy thereof will be supplied to the respondent either without charge or upon the payment of a reasonable fee. Copies of exhibits introduced at the hearing or at the taking of depositions will be supplied to par-

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ties upon the payment of a reasonable fee (31 U.S.C. 9701).

[43 FR 39757, Sept. 7, 1978, as amended at 76 FR 17776, Mar. 31, 2011]

#### **§ 901.48 Proposed findings and conclusions.**

Except in cases where the respondent has failed to answer the complaint or where a party has failed to appear at the hearing, the Administrative Law Judge, before making his/her decision, shall give the parties a reasonable opportunity to submit proposed findings and conclusions and supporting reasons therefor.

#### **§ 901.49 Decision of the Administrative Law Judge.**

As soon as practicable after the conclusion of a hearing and the receipt of any proposed findings and conclusions timely submitted by the parties, the Administrative Law Judge shall make the initial decision in the case. The decision should be based solely upon the pleading, the testimony and exhibits received in evidence at the hearing or specifically authorized to be subsequently submitted under the applicable laws and regulations. The decision shall include (a) a statement of findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact or law presented on the record, and (b) an order of suspension, termination or reprimand or an order of dismissal of the complaint. The Administrative Law Judge shall file the decision with the Executive Director and shall transmit a copy thereof to the respondent or his/her attorney or agent of record. In the absence of an appeal to the Joint Board or review of the decision upon motion of the Joint Board, the decision of the Administrative Law Judge shall without further proceedings become the decision of the Joint Board 30 days from the date of the Administrative Law Judge's decision.

#### **§ 901.50 Appeal to the Joint Board.**

Within 30 days from the date of the Administrative Law Judge's decision, either party may appeal to the Joint Board for the Enrollment of Actuaries. The appeal shall be filed with the Executive Director in duplicate and shall

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include exceptions to the decision of the Administrative Law Judge and supporting reasons for such exceptions. If an appeal is filed by the Executive Director, a copy thereof shall be transmitted to the respondent. Within 30 days after receipt of an appeal or copy thereof, the other party may file a reply brief in duplicate with the Executive Director. If the reply brief is filed by the Executive Director, a copy of it shall be transmitted to the respondent. Upon the filing of an appeal and a reply brief, if any, the Executive Director shall transmit the entire record to the joint board.

### § 901.51 Decision of the Joint Board.

On appeal from or review of the initial decision of the Administrative Law Judge, the Joint Board for the Enrollment of Actuaries will make the final decision. In making its decision the Joint Board will review the record of such portions thereof as may be cited by the parties to permit limiting of the issues. A copy of the Joint Board's decision shall be transmitted to the respondent by the Executive Director.

### § 901.52 Effect of suspension, termination or resignation of enrollment; surrender of enrollment certificate.

If the respondent's enrollment is suspended, the respondent shall not thereafter be permitted to perform actuarial services under ERISA during the period of suspension. If the respondent's enrollment is terminated, the respondent shall not thereafter be permitted to perform actuarial services under ERISA unless and until authorized to do so by the Executive Director pursuant to § 901.54. The respondent shall surrender his/her enrollment certificate to the Executive Director for cancellation in the case of a termination or resignation of enrollment or for retention during a period of suspension.

### § 901.53 Notice of suspension, termination or resignation of enrollment.

Upon the resignation or the issuance of a final order suspending or terminating the enrollment of an actuary, the Executive Director shall give notice thereof to appropriate officers and employees of the Department of the Treasury, the Department of Labor,

the Pension Benefit Guaranty Corporation, and to other interested departments and agencies of the Federal Government.

### § 901.54 Petition for reinstatement.

Any individual whose enrollment has been terminated may petition the Executive Director for reinstatement after the expiration of five years following such termination. Reinstatement may not be granted unless the Executive Director, with the approval of the Joint Board, is satisfied that the petitioner is not likely to conduct himself/herself thereafter contrary to the regulations in this part, and that granting such reinstatement would not be contrary to the public interest.

## Subpart E—General Provisions

AUTHORITY: Sec. 3042(b), ERISA, 29 U.S.C. 1242(b).

SOURCE: 43 FR 39761, Sept. 7, 1978, unless otherwise noted.

### § 901.70 Records.

(a) *Availability.* There are made available for public inspection at the Office of the Executive Director of the Joint Board for the Enrollment of Actuaries a roster of all persons enrolled to perform actuarial services under ERISA and a roster of all persons whose enrollments to perform such services have been suspended or terminated. Other records may be disclosed upon specific request, in accordance with the applicable disclosure and privacy statutes.

(b) *Disciplinary procedures.* A request by an enrolled actuary that a hearing in a disciplinary proceeding concerning him/her be public, and that the record thereof be made available for inspection by interested persons may be granted if written agreement is reached in advance to protect from disclosure tax information which is confidential, in accordance with applicable statutes and regulations.

### § 901.71 Special orders.

The Joint Board reserves the power to issue such special orders as it may deem proper in any case within the purview of this part.