



## **Frequently Asked Questions**

### **Opening the ATA certification exams and the CT credential to nonmembers of ATA**

#### **1. What is "decoupling"?**

*"Decoupling" is a shorthand term to describe removing the link between membership in ATA and the right to take the certification exam and maintain certified translator status. It simply means allowing nonmembers to take the exam and to hold status as ATA-Certified Translators (CTs).*

#### **2. Why should ATA open the certification exam to nonmembers?**

*Removing the membership requirement to take the exam and maintain certified status would benefit the Certification Program, ATA, and all of its members in a number of ways.*

*Increased awareness of the ATA Certification Program and a greater number of professional practitioners using the CT designation will promote the recognition of the profession, the first purpose of ATA listed in its Bylaws. Our Bylaws also state that ATA has a duty to support certification programs "for translators and interpreters who meet specific standards of competence." Our Bylaws thus make that support contingent on an individual's competency, not their membership in ATA.*

*We also believe the credibility of the Certification Program would be enhanced because a positive correlation between professional competence and paying membership dues has never been demonstrated. A membership requirement is sometimes perceived as mere "pay to play"; a ploy simply to raise revenue. External stakeholders, and government agencies in particular, are reluctant to endorse a membership requirement as a professional qualification.*

*Opening the exam would likely increase demand by freelancers, and ultimately recognition by clients. For instance, there are at least 50,000 translators and interpreters in the United States working in our industry, and at present, fewer than 2,000 of them are certified. Over the years, ATA has received numerous comments to the effect that a potential candidate would like to take the exam, but not if membership is required. We have also heard from certified members who feel that ATA is placing an undue or unfair burden on them by requiring them to maintain their membership in order to identify themselves as ATA-certified translators.*

*The extra fees paid by nonmembers would benefit the Certification Program financially and reduce the expense currently borne by the membership. The fees currently paid by members are less than the costs incurred, and this loss is absorbed by membership dues. Nonmember fees will be based on a "cost plus" model. Therefore, each payment by a nonmember will help subsidize the total program costs, thus freeing up dues revenue to be used on other member-benefit programs.*

*Opening the exam would also remove the last vestige of the "guild mentality" that pervaded ATA when it was founded. Over the last 60 years, ATA has eliminated all of the characteristics of a guild, which once governed membership. For example, in order to become an Active (voting) member in 1965, a professional translator had to be "endorsed" by at least two active members in writing. (If no endorsers were available, the applicant had to submit proof of three years of professional experience in the form of written references from individuals who supervised their work.) The applicant then had to be approved by the Membership Committee. In guild terms, one had to be recommended by several "master" translators in order to achieve such status.*

*ATA is not a guild nor a union. It is a professional association. The Board has researched this issue and has been unable to find any professional associations for other professions in the United States that offer a qualification credential that requires membership as a credentialing criterion.*

*ATA does not want to be "an" association of translators and interpreters; it wants to be "the" association for our profession, akin to the American Medical Association, American Bar Association, etc. Best practices at these other top-tier associations separate (or "decouple") membership from certification. If ATA wants to be the top-tier association for our profession, it should pursue best practices.*

*Last but not least, there is a potential legal issue arising from excluding nonmembers from becoming certified. Such an exclusion could be deemed a "refusal to deal," also known as a boycott, and a violation of US antitrust law.<sup>1</sup> In the same way that ATA cannot discuss or coordinate rates, it cannot unduly control the supply of certified translators, which would have a similar effect on the market. By excluding nonmembers, it currently [inadvertently] impacts that supply. The Board has the duty of ensuring that ATA is not in violation of any federal laws or statutes.*

**3. ATA's bylaws state that taking the certification exam is a membership right. Why did the Board approve this policy change without approval of the members through a bylaws amendment? Why doesn't the Board ask the membership to approve this change?**

*The current and past Boards take/took the position, which is backed up by an opinion from ATA legal counsel,<sup>2</sup> that because the bylaws do not expressly state that taking the certification exam is an exclusive right of membership, opening the exam to nonmembers is a change in policy that is governed by Article IV, Section 2 of the bylaws, which states: "The Board of Directors shall have the power and authority to manage the Association's property and to regulate and govern its affairs; to determine policies and changes therein; to specify and review the work of the elected officers; to decide on applications for membership; and to devise and execute such measures as the membership may direct or which, in the judgment of the Board of Directors, are necessary or desirable on behalf of the Association or in furtherance of its policies and objectives."*

*In addition, Article III, Section 2 – Eligibility, subsection (a), currently states that: "1) Any person who... (c) meets one of the following criteria: (i) has passed a certification examination administered by the Association..." is eligible to become an Active member. Therefore, it cannot be both a criterion for becoming an Active member and an Active member's exclusive right.*

*Thus, the bylaws are ambiguous on this issue and reasonable people can have different interpretations. In light of that and based on feedback from members who feel uninformed about the rationale for and implementation of decoupling, the Board recently voted to delay opening the exam to nonmembers until January 1, 2021, so that this issue can be clarified. On the 2020 ballot, the*

*Board plans to propose a bylaws amendment that would clarify that taking the exam is not an exclusive membership right.*

*While the Board still believes it has acted properly and in accordance with the bylaws, given the ambiguity in the wording, and to avoid problems that would arise if the exam were open to nonmembers and subsequently closed again, the members will be asked to amend the bylaws as they see fit.*

**4. How will decoupling work?**

*Generally speaking, the only difference between members who take and pass the exam and nonmember CTs will be the amount that nonmembers pay for practice tests, exams, continuing education training provided by ATA, and recertification. Naturally, nonmembers will not enjoy any membership benefits. See below for answers to specific questions about implementation.*

**5. Will nonmember CTs be bound by the ATA Code of Ethics and Professional Practice?**

*Yes, in order to take the examination, nonmembers will be required to affirm that if they pass, they are aware of, and must abide by, the ATA Code of Ethics and Professional Practice (CEPP) to maintain ATA-certified translator (CT) status. Ethics complaints against nonmember CTs will be handled by the Ethics Committee in the same manner as complaints against members. Nonmember CTs who are found to have violated the CEPP can be sanctioned through censure, suspension, or revocation of their certified status.*

**6. Will nonmember CTs have continuing education requirements to maintain their certification?**

*Yes, nonmember CTs will have the same continuing education (CE) requirements as certified members (except certified members age 60 or over – see below). However, they will be required to pay more for ATA CE training, such as webinars and conferences, and will also pay a higher administrative fee for recertification. Unlike certified members age 60 and over, who do not have to pay the recertification fee, nonmember CTs will have to meet the CE requirements and pay the recertification fee regardless of age.*

**7. CTs are required to submit 20 hours of continuing education every three years to maintain their certification. Nonmember CTs will be able to avoid complying with the CE requirements for three years before being disqualified. What will prevent them from using the CT designation during that time?**

*Nothing. But the same will hold true for certified members. After decoupling, a certified member who does not renew will still retain their certification until they fail to meet the recertification requirement. The only way to mitigate this risk would be to require recertification every year or every other year—with an attendant annual recertification fee. The Board would prefer not to increase the expense for members (and it would be an unfair trade practice to have a different reporting period for nonmembers.)*

**8. Will nonmember CTs be listed in the ATA Membership Directory?**

*No. Potential clients looking for translators in the ATA directory will only find members. The public will be able to verify the CT status of nonmembers as is now the case for certified members.*

**9. Won't opening the exam to nonmembers result in a loss of members and dues revenue? Current CTs will be able to drop out and prospective CTs will never join?**

*The Board has conducted numerous financial studies of this issue, because it recognizes the potential impact of modifying the status quo. In addition, it has established a set of financial requirements to enable the association to deal with potential losses during the transition period. It does expect to see an initial drop in both membership renewals and new members. That is a consequence that the Board feels is worthwhile. The increased recognition of the CT designation and the certification program will spill over to ATA itself and enhance the value of the ATA brand and membership.*

*Only about 20% of current ATA members are certified. That means 80% find value in ATA beyond just certification. For those 20%, to mitigate risk, the Membership Committee is working on improving existing benefits, adding new ones, as well as communicating the value of membership to current and future members.*

**10. What about CT Life members? What happens to a Life member who drops out of ATA?**

*Life members who drop out of ATA will lose their membership benefits, including any waivers of CE requirements (for grandfathered members over 60) or reduced recertification fees. While they can retain their certification, they will be required to meet the same recertification criteria as every other CT.*

**11. What happens when a nonmember CT joins ATA, or when a former member decides to re-join after dropping out?**

*Nonmembers simply gain the rights and benefits of members when they join. As the primary difference in certification requirements is the price paid for CE training and recertification, new members would see cost savings over time. For "lapsed" members who return, the answer depends on whether the grace period has expired since their membership lapsed. If less than three years has passed, they can retain CT status by meeting the regular CE requirements. This is currently the case for lapsed members. If more than 3 years has passed and they cannot meet the recertification criteria, they will have to take the examination again. In effect, they would start from scratch.*

**12. What will the price differences be for members and nonmembers?**

*Members will enjoy lower prices than nonmembers for all certification-related costs and expenses. These numbers have not yet been finalized. In order to avoid antitrust issues, the Board has been advised that the price differences for nonmembers should generally be set such that there is no significant financial incentive to become a member. In other words, the total cost of becoming and remaining certified, i.e., taking the exam and completing CE requirements, for nonmembers should not be so much higher that a nonmember is effectively required to become a member.*

**13. Has the scope of nonmember interest in taking the certification exam ever been addressed?**

*Nonmembers have never been surveyed, but we have significant anecdotal evidence that people would attempt to become certified if membership were not required.*

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<sup>1</sup> Email from ATA Counsel, to ATA ED Bacak, dated Feb 21, 2018. “refusal to make certain valuable association benefits available to non-members, such as certification, could be challenged under the antitrust laws as a concerted refusal to deal, also known as a boycott, or as a tying claim. Best practices in association law provide that such valuable association benefits should be made available to non-members, although they may be charged somewhat higher rates (though not as much as to essentially compel membership). Although no such claims apparently have been made, this potential cause of action likely remains available.”

<sup>2</sup> Email from ATA Counsel, to ATA ED Bacak, dated 21 Feb 2018. “With respect to the right to take certification examinations, the Bylaws clearly intend that Active members (as well as Corresponding and Associate members, as noted below) have the right to take certification exams, but this does not say the right to take exams is solely reserved to Active members and it would be somewhat unusual for this to be an exclusive right. For example, refusal to make certain valuable association benefits available to non-members, such as certification, could be challenged under the antitrust laws as a concerted refusal to deal, also known as a boycott, or as a tying claim. Best practices in association law provide that such valuable association benefits should be made available to non-members, although they may be charged somewhat higher rates (though not as much as to essentially compel membership). Although no such claims apparently have been made, this potential cause of action likely remains available.”

Further, nothing in the Bylaws states that the right of certain members to take certification examinations is exclusive. Sub-sections (b) through (d) of Section 3 further describe the rights for Corresponding Members, Associate Members, and Institutional and Corporate members, but there is no reference to any rights being exclusive only to members. Given that these provisions do not explicitly state that the rights of members are exclusive rights, it is our view that the right to take the exams is not exclusive to members. It appears that the Bylaws language was drafted in a way to provide flexibility for ATA to offer the certification exams to non-members. Given how specific translators are with word usage and meaning, it would seem that a statement clearly making certain rights exclusive to members would be used if that were the intent.

With that, we believe there are sufficient legal ambiguity, flexibility, and authority for the Board to make a policy decision on this issue if it wanted to open up eligibility for certification exams to non-members. Nevertheless, if the Board determines that the decision regarding ATA’s certification exam should be made by ATA members, the members could vote as part of a formal Bylaws amendment to clarify the issue.