Hewitt Associates LLC
100 Half Day Road
Lincolnshire IL 60069
Tel 847.295.5000 Fax 847.295.7634
www.hewitt.com

Hewitt

March 7, 2008

Office of Regulations and Interpretations
Employee Benefits Security Administration
Attn: 408(b)(2) Hearing, Rooms N-5655
U.S. Department of Labor
200 Constitution Avenue, NW.
Washington, DC 20210

Dear Sir or Madam,

Hewitt Associates (Hewitt) welcomes the opportunity to provide oral comments to the Department of Labor (the Department) at its hearing on March 20, 2008, on the topic of the proposed amendment to its regulation 29 CFR 2550.408b-2(c) under ERISA section 408(b)(2) relating to the provision of services to employee benefit plans. These proposed regulations were published in the Federal Register on December 13, 2007. Hewitt has submitted written comments and would now like to address some of the issues we raised in our letter at the hearing.

Who We Are

As a large independent record keeper not affiliated with an investment management firm, Hewitt has a unique perspective. With more than 60 years of experience, Hewitt (http://www.hewitt.com/) is a leading global provider of human resources outsourcing and consulting services. Hewitt consults with more than 2,400 companies and administers human resources, health care, payroll and retirement programs on behalf of more than 350 companies for millions of employees and retirees worldwide. Our outsourcing services process customer interactions from nearly 20 million employees and retirees annually, making Hewitt one of the largest providers of retirement plan recordkeeping and administration services in the country

In our comment letter, we requested some modifications and clarifications of proposed rules. The three topics we wish to address at the hearing are:

- The need for uniform disclosure requirements for bundled and unbundled fees
- Perspective on productive business relationships; the conflicts of interest disclosure requirements should be omitted from the final regulations
- Scope of compliance effort; the final regulations should not be effective for at least one year and a good faith transition period for existing contracts is also needed

These topics are addressed in the following discussions.

1. Disclosure requirements should apply uniformly to all service providers, whether bundled or unbundled. (6 minutes) The proposed regulations do not require bundled service providers to disclose the allocation of fees to affiliates and subcontractors within the bundled arrangement. The Department has followed the same approach as the requirements for reporting fees on the Schedule C of the Form 5500 (Annual Return/Report of Employee Benefit Plan). We submit, however, that whether or not expenses must be separately reported on a plan's annual return, the fiduciary must still understand the components of fees paid in order to make a determination as to whether the fees are reasonable, and therefore whether the underlying contract is reasonable.

Hewitt

In addition to evaluating fees at the time the contract is executed, fiduciaries will use the information contained in required disclosures to compare competing offers and select service providers. Therefore, fiduciaries should know that there is a cost associated with services that they may perceive as free because they are wrapped into a bundled offer, in order to uniformly compare bundled costs with other unbundled services. By comparing allocated administrative costs under a bundled arrangement with the administrative costs of an unbundled service provider, a fiduciary can better understand competing offers. The fiduciary may leverage this understanding to select a lower cost unbundled arrangement, or negotiate lower fees with a bundled provider. Either way, the plan and plan participants benefit, as demonstrated by the following example from Hewitt's consulting experience.

In one situation, a fiduciary requested a thorough breakdown of bundled costs. The fiduciary hired Hewitt to help identify the breakdown of fees associated with administration versus investment management services. Once this uncoupling of fees was completed it was discovered that the revenue sharing fees allocated for recordkeeping and administration were 40 percent higher than the equivalent costs of other unbundled administrative service providers. With that information, the fiduciary was able to negotiate a reduction of fund expenses and revenue sharing to make the bundled fees competitive and therefore reasonable. This reduction accrued to plan participants in the way of lower fees. Moreover, this cost savings compounded to the benefit of participants each subsequent year of the contract.

The proposed disclosure rules however, do not require fiduciaries to be provided with the information necessary to make a uniform comparison of packages and services offered by different providers. If such a breakdown is not required, some bundled service providers may refuse to furnish this information, even upon request. Ultimately, there will be a significant negative financial impact on plans and plan participants. We therefore request that the final rules require the disclosure of the allocation of fees to affiliates and subcontractors in a bundled fee arrangement, in order to achieve uniform disclosure and a better understanding of plan fees. With this understanding, fiduciaries will have the necessary information to determine whether a contract is reasonable.

2. Perspective on productive business relationships vs. conflict of interest--the conflicts of interest disclosure requirements should be omitted from the final regulations. (2 minutes) Section 2550.408b-(c)(1)(iii)(D) of the proposed regulations requires a service provider to disclose any relationship that creates or may create a material conflict of interest that might impact its performance of services under the contract. The concept of conflict of interest as reflected in the proposed rules is ambiguous. Moreover, a "potential" conflict does not appear to be contemplated in the scope of the prohibited transaction rules under section 406 of ERISA. The brief reference to conflict of interest in section 2550.408b-2(e) of the current ERISA regulations seems to refer to an actual conflict resulting in a prohibited transaction.

We believe that with existing law and the remaining provisions of the proposed regulations, fiduciaries will have sufficient information to judge whether any other business relationships of a service provider will compromise its performance under a contract. Both fiduciaries and service providers have always had to be alert to possible conflicts caused by other business relationships that might result in a prohibited transaction under ERISA section 406. Service providers may be subject to costly penalties if found to be engaged in a prohibited transaction. Thus, existing law already provides a significant deterrent.

Moreover, the other provisions of these proposed regulations obligate the service provider to disclose sufficient information to allow a fiduciary to evaluate the provider's objectivity. Under the proposed rules, service providers must disclose all direct and indirect compensation, any situation in which providers may be able to influence their compensation, as well as procedures to prevent existing or potential conflicts from adversely impacting service delivery. If a service provider is not forthcoming with its disclosures, the fiduciary will notify the Department pursuant to the procedures set forth in proposed Prohibited Transaction Class Exemption 2008-XX. This gives the service provider sufficient incentive to furnish thorough responses.

Additionally, the term "conflict of interest" is pejorative. It implies that positive and productive business relationships are, instead, inappropriate. Therefore, because smaller service providers will have fewer disclosures than large providers, fiduciaries may be inclined to select the smaller providers, even though it might not be the best selection. However, it might appear to be the most prudent selection based upon the weight of the larger provider's "conflicts."

It is possible that some providers will not even recognize what relationships create conflicts, and therefore, might not sufficiently disclose. However, given that the consequences of noncompliance with these requirements may include the cancellation of service contracts and loss of business relationships, most service providers may be inclined to over-disclose. Therefore, if included in the final rules, this provision could result in an inefficient process of mountainous disclosure, resulting in overwhelming review obligations for the fiduciary. The time, effort, and cost to all parties would be unjustifiably burdensome. We therefore request that this provision be omitted from the final regulations

3. Scope of compliance effort; the final regulations should not be effective for at least one year and a good faith transition period for existing contracts is also needed. (2 minutes) The preamble to the proposed regulations indicates that the regulations will be effective 90 days after publication. Given the amount of clarification that will be necessary in order to comply with these regulations, we request that service providers should be required to make a good faith effort to comply with these regulations, but that the regulations are not effective for at least one year after publication.

The preamble estimates that each service provider will have to spend one hour to become familiar with the rules and 80 hours to implement. We realize that the Department is attempting to estimate time for all service providers of all sizes. However, we believe that even the smallest provider of any type of service will spend significantly more than one hour understanding what these rules mean to its business. For the large multi-service providers, that number will be appreciably larger.

The 80 hours estimate of time required for implementation is incredibly low. We hope that there will be considerable commonality to implementation efforts. Standard templates, checklists, and training will be developed or updated for the various types of services. However, disclosure is ultimately a client-by-client proposition. The scope of services may vary from one client to the next, and this variation may impact the relevant disclosure. While much disclosure may be standardized, each relationship must be reviewed for any special situation that might indicate additional information is needed. We therefore would suggest that a much more substantial time estimate would be appropriate for all but the very smallest service providers.

The Department also needs to understand that fiduciaries must have time to review the disclosures and perform any necessary due diligence. Because we believe that the time required for analysis, implementation and review is much greater than anticipated in the preamble to the proposed regulations, we request that the effective date of the final regulations be extended.

Additionally, the proposed rules are not specific regarding the treatment of existing contracts or arrangements. They could be interpreted to mean that existing contracts do not comply with ERISA section 408(b)(2) even though such contracts were valid when executed. If this is the intended interpretation, then by the Department's own estimates, more than one million existing contracts must be brought into compliance by the effective date. Such an effort would be impossible. Service providers require clarification of several issues from the final regulations and so will not be able to begin some of their compliance efforts until after publication. In order to address the sheer volume, we recommend that a transitional good faith compliance period be extended to existing contracts. We request that for at least one year after the effective date of the final rules, service providers will be deemed compliant as long as they make the required disclosures by the end of the transition period. We also request that the Department not require existing contracts to be amended. Rather, service providers should be able to meet these requirements by providing the required disclosures.

If you have any questions or comments, please contact the undersigned at the telephone number or electronic mail address provided below.

Sincerely,

Hewitt Associates LLC

Cynthia W. Milstead

(847) 295-5000
cindy.milstead@hewitt.com

CWM:kgh