December 17, 2010

Submitted electronically via the Federal Rulemaking portal @ www.regulations.gov

Attention: Definition of Fiduciary Proposed Rule
Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N–5655
U.S. Department of Labor
200 Constitution Avenue, NW.
Washington, DC 20210

Dear Sir or Madam,

Subject: Definition of the Term “Fiduciary” (RIN 1210-AB32)

Aon Hewitt welcomes the opportunity to submit for consideration to the Department of Labor our comments relating to the proposed definition of the term “Fiduciary” under 29 CFR 2510.3-21(c). We support the Department’s goal of updating this rule for changes in the financial industry and the expectations of plan participants and beneficiaries, as well as the intent to better protect participants and beneficiaries from conflicts of interest and self-dealing. In particular we believe that these goals can best be achieved by expanding the definition of investment advice to include the recommendations to a participant to take a plan distribution.

Who We Are

Aon Hewitt is the global leader in human capital consulting and outsourcing solutions. The company partners with organizations to solve their most complex benefits, talent, and related financial challenges, and improve business performance. Aon Hewitt designs, implements, communicates, and administers a wide range of human capital, retirement, investment management, health care, compensation, and talent management strategies. With more than 29,000 professionals in 90 countries, Aon Hewitt makes the world a better place to work for clients and their employees.

Investment Advice Should Include Recommendations to Take Plan Distributions

In the preamble to the proposed regulation, the Department requested comments on “whether and to what extent the final regulation should define the provision of investment advice to encompass recommendations related to taking a plan distribution.” Under the proposed rule, investment advice includes situations when a person “provides advice or makes recommendations as to the management of securities or other property” [for a fee or other compensation]. As discussed below, we believe that the Department should include a recommendation to a participant to take a plan distribution of the assets in his or her account in the definition of investment advice.

A decision to take a plan distribution is comprised of two smaller but significant decisions:

- First, the participant must decide whether to liquidate current investments. Investment decisions to buy or sell a particular plan investment option are at the core of a participant’s management of his or her plan account. This is true whether the sale of an investment is merely the prelude to investing in another plan investment option or the precursor to taking a plan distribution. In addition, if the

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recommendation does not encompass a total distribution, the participant must decide which (or how much of each) investment to liquidate.

- Second, a participant must decide how to manage the distribution of the funds from his or her plan account, including the time, manner, form, and future custody of the plan distribution. The decision of where to invest assets outside of the plan is a critical component of the participant's decision.

In Advisory Opinion 2005-23A (December 7, 2005), the Department indicated that a recommendation to take a distribution does not constitute investment advice because the assets will be invested outside of the plan. At the time of the recommendation, however, the assets in question are assets of the plan. Therefore, differentiating between a recommendation to invest in plan options or to invest outside of the plan creates an inconsistency in the application of the ERISA fiduciary rules. It also appears to create a potential bias toward a recommendation to take a distribution because an adviser could both avoid ERISA fiduciary status and also recommend an investment in which it has a financial interest.

We submit that while a participant has assets invested in the plan any recommendation is a recommendation as to the management of a participant's securities in the plan. Such advice should therefore constitute investment advice under ERISA. In short, we view the application of fiduciary standards to advisers who recommend plan distributions as a logical application of ERISA's fiduciary rules, and certainly in the best interests of participants and beneficiaries.

Applicability of Other Laws

The Department also inquired about what other laws might apply to recommendations to take a plan distribution. We agree that once assets are invested outside of the plan, those monies are no longer plan assets and no longer enjoy the protection under ERISA. Any investment advice provided after the participant takes a distribution would be governed by common law principles of fiduciary duty and individual state laws, if applicable. As noted, however, we believe that the initial recommendations provided to participants while the assets are still within the plan (e.g., divestiture and distribution) should be subject to ERISA.

Costs and Benefits

By extending the regulation to include the recommendations to take a distribution from the plan, we believe the associated costs would be minimal and that the benefits to participants and beneficiaries would greatly outweigh those costs. We also anticipate that treating all recommendations relating to the application and management of plan assets consistently may result in more participants leaving their assets in their employer plans. Retention of assets within a plan provides a participant or beneficiary with a number of rights and protections that they do not receive outside of the plan. Examples may include:

- Protective oversight of a plan fiduciary that must exercise its obligations and duties under a prudent expert standard, in the best interests of participants and beneficiaries;
- Access to unbiased advice and other decision support tools designed and operated with the best interests of plan participants in mind, often at prices significantly discounted from individual investment advice available in the retail market;
- More highly personalized and tailored plan communications, including account statements, educational material, and fee disclosure information; and
- Leveraged bargaining power of employer plans, resulting in lower investment costs within the plan when compared to similar investments outside the plan.

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Any recommendations to participants and beneficiaries to take a distribution from their qualified plan should be considered in the context of these potential advantages. Including such recommendations in the definition of investment advice will result in more balanced and unbiased recommendations that consider all options.

Closing

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

Sincerely,

Aon Hewitt

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