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Hewitt

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Washington, DC 20224-0001

Subject: Comment Letter on Proposed Regulations on Enrollment of Actuaries (REG-159704-03)

Hewitt Associates LLC (Hewitt) appreciates the opportunity to submit comments on the proposed regulations under 20 CFR part 901 relating to the enrollment of actuaries under section 3042 of ERISA. These proposed regulations (REG-159704-03) were published in the *Federal Register* on September 21, 2009.

Who We Are

With more than 65 years of experience, Hewitt (www.hewitt.com) is a leading provider of human resources outsourcing and consulting services. Of the roughly 23,000 associates worldwide Hewitt employs, more than 250 are enrolled actuaries. Headquartered in Lincolnshire, Illinois, we serve more than 2,000 U.S. employers from offices in 18 states. As a global leader in integrated retirement solutions, Hewitt Associates has extensive experience supporting clients in pension plan design, finance, and administration for mid- to large-sized employers. We advise more than 2,500 clients on more than 3,500 pension plans and administer defined benefit plans for more than 385 clients. In total, our clients represent more than 10 million plan participants.

Summary

We believe that the work the Joint Board has done to update and clarify the guidance for enrolled actuaries as reflected in these proposed regulations is generally helpful and appropriate. In particular, we agree with the proposed changes to the number of core credits required based on the experience of the enrolled actuary and with strengthening the continuing education requirements for reinstatement. We do believe, however, that some substantive changes and clarifications to the proposed rules would be appropriate.

In general, our comments relate to two portions of the proposed regulations. For the changes to the enrollment procedures, we are mostly suggesting clarifications that we believe will better integrate some of the new provisions. With respect to standards of performance of actuarial services, we are suggesting changes that we believe will address potential concerns with parts of the proposed regulations.

Enrollment Procedures (Section 901.11)

Under the enrollment procedures, there are two items that we believe should be addressed. The first is the integration of the new minimum continuing education requirement covering ethical standards with the other continuing education requirements. The second relates to the requirement that no less than one-third of the total hours of continuing education credits for each cycle be obtained from a formal program.

Integration of Continuing Education Credits Covering Ethics

Section (e)(2)(vi) of the proposed regulations adds a requirement that at least two credit hours each enrollment cycle cover ethical standards. "Ethical standards" is not defined in the proposed regulation. However, the background section provides the guidance below that we suggest be included in section(e)(2)(vi):

"Topics that would meet this requirement include (but are not limited to) discussions of professional codes of conduct, professional responsibilities, and any of the topics addressed in section 901.20 of these proposed regulations."

Sections (f)(3)(iv) and (v) of the proposed regulations specify the contents of the certificate of completion that must be provided by the qualifying sponsor. We suggest the amount of ethics credits be added to the required contents. We believe this added requirement on the qualifying sponsor will help enrolled actuaries monitor their credits, allow for an easier audit process by the Joint Board regarding compliance with the continuing education requirements, and will not materially add to the work of the qualifying sponsor. One way to accomplish this change would be to add "the credits related to ethical standards" to subparagraph (E).

Sections (k)(7)(ii) and (iii) of the proposed regulations provide situations where the amount of credits under section (e)(2) are adjusted. There are several very helpful examples in section (o) which clarify how the reinstatement rules work. Those examples, however, are silent regarding the amount of credit for ethical standards (under (e)(2)(vi)) that would be required. We believe that this addition to the examples in section (o) would remove the ambiguity that results from the integration of the sections.

Minimum Formal Program Requirement

Section (f)(1) requires that no less than one-third of continuing professional education credits come from formal programs, which require attendance in person. We believe that the Joint Board should delete the minimum formal program requirement. Such a requirement can be burdensome for actuaries at small firms, for actuaries at larger firms working at smaller offices, for actuaries working remotely, and for those actuaries with physical limitations. The requirement drives up the cost of education and ultimately the cost of actuarial services. We believe that the value of the education is from the content, delivery, and the interaction and exchange of perspectives—not from the physical proximity of enrolled actuaries.

Standards of Performance of Actuarial Services (Section 901.20)

There are three items under this portion of the proposed regulations that we believe should be modified: reporting material violations of another enrolled actuary (professional duty), conflicts of interest, and returning client's records.

Professional Duty

Section (b)(3) requires "An enrolled actuary, upon learning of another enrolled actuary's material violation of this section, shall report the violation to the Executive Director." While it may not be appropriate to refer directly to the Code of Conduct adopted by all five U.S. actuarial organizations in the proposed regulations, we believe that the requirement in the proposed regulation would work more effectively if it were more consistent with the process that the actuary is already required to follow in most situations in the United States.

One change that would be very helpful would be to incorporate into the regulations the "unresolved" wording from Precept 13 of the Code of Conduct. Another very helpful change would include the suggestion that the actuary discuss the situation with the other actuary. Such language could encourage the resolution of differences between the two actuaries and improve the quality of the work product without having to get the Joint Board involved.

In order to successfully implement this suggestion, other sections of the Code of Conduct may be helpful guides for the appropriate change to the proposed regulations. Precept 9 incorporates the handling of confidential information, and Precept 10 incorporates the topic of courtesy and cooperation.

Conflicts of Interest

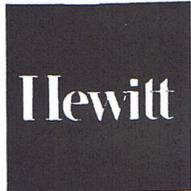
Section (d) modifies the existing conflicts of interest requirement. We generally agree that a disclosure of the potential conflicts of interest and agreement by the appropriate party is appropriate. However, we strongly suggest that modified wording be used regarding the parties who must provide express agreement in order for the work to be performed. Section (d)(3) specifies those parties who are to be informed of the actual or potential conflict as "plan trustees, any named fiduciary of the plan, the plan administrator thereof and, if the plan is subject to collective bargaining agreement, the collective bargaining representative." These same parties would be required to expressly agree, in writing, to the enrolled actuary performing the actuarial services.

The authority to engage an actuary for an assignment is within the authority of the appropriate plan fiduciary; generally the plan administrator or other person is granted that authority. It would be impractical for other parties to have veto power over such a decision. If any of those who have been notified of the conflicts or potential conflicts of interest have concerns, they can express those concerns to the appropriate plan fiduciary. That party can weigh all the appropriate factors.

Return of Client's Records

Section (j) adds a requirement to return client records. We believe that the return of client records should be an issue governed by agreement between the enrolled actuary and the client. It has been our experience that this issue is typically covered by the contract which covers the actuarial services.

Should the Joint Board nevertheless conclude that a requirement is needed in this area, we suggest that the description of what records are covered by this requirement should be clarified. Currently, the requirement applies "for the client to comply with his or her legal obligations." We believe the phrase "legal obligations" is too broad and should be limited. In the extreme, any contact between the client and a third party could create a legal obligation that the enrolled actuary has no control over and which would create an unreasonable obligation on the enrolled actuary.



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Closing

We appreciate the opportunity to submit these comments regarding the proposed regulations on enrollment of actuaries. 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

A handwritten signature in black ink that reads "Jay A. Yager". The signature is written in a cursive style.

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