
F. Additional Consulting Services

As a full service human resources consulting firm, Aon has a number of additional consulting practices that may be of value to [REDACTED]. The additional service areas utilize practice specialists, trained in their specific areas of expertise. Their services are typically delivered on a fee-for-service and/or project consulting basis.

Part of our role as [REDACTED]'s employee benefit account manager, is not only introducing additional Aon practices that support your human resource objectives, but also managing the work completed by these other practices to assure [REDACTED]'s satisfaction.

Some of the more common practice areas are outlined below.

Employee Benefit Outsourcing (EBO)

Aon's EBO Group currently operates three Benefit Administration centers that are electronically linked and provide a wide array of services to assist our clients with their benefit administration and employee communications challenges. In addition to these large case administration centers, Aon also operates a local administration center in Los Angeles.

EBO is also charged with implementation of "Self Service Now", Aon's internet based enrollment and administration system. This application provides a broad range of enrollment and benefit management conducted via web-based applications.

Clients find EBO administrative services can significantly reduce the burden on their own human resources department and employee benefits staff.

Organizational Communications

We assist organizations in planning and implementing strategies to communicate benefits, compensation and other human resource issues. Our portfolio includes an array of media from print to video to web-based employee communication solutions.

Our communications practice provides access to strategic communications planning, award-winning writing and design services, turnkey project and production management, electronic communications, survey preparation, focus group facilitation, training, recruiting and orientation programs, as well as wellness communications.

Compensation

We design and implement base compensation programs and incentive plans that include cash and capital accumulation components. These forms of remuneration are developed to support business strategies and enhance management processes.

We also establish performance management systems and help derive the maximum degree of effectiveness from compensation programs through communication and training efforts. Our work can have a laser focus, such as incentive compensation for key executives, or may be broad based, covering a company's overall compensation strategy and structure.

Human Resources

This practice focuses on the design and implementation of human resource programs and processes that enhance individual and organizational effectiveness.

The work addresses organizational needs, such as job design and analysis, valid selection and promotion systems, employee skills assessment, management assessment, performance management systems design, training needs analysis, employee attitude measurement, compensation program design and test/selection program administration. Our experience includes the development of defensible strategies for recruiting, assessment and selection.

Through our Loyalty Institute, we have extensive experience in designing, conducting and reporting of employee opinion surveys. This work includes our benchmark surveys on employee loyalty, anchored by our US@Work surveys.

Retirement - Defined Contribution

We provide consulting, design, installation and administrative services for money purchase, thrift, 401(k), 403(b), 457, employee savings and deferred compensation plans, as well as for ESOPs and other allocated arrangements.

Other services include preparation of comprehensive plan administration manuals and individual participant statements. Clients have access to on-line data inquiry and an on-line distribution system. Allocations are done on a direct basis for clients and a third party basis for bank trust departments nationwide.

Retirement - Defined Benefit

Aon provides consulting on plan design and administration. The central feature of the defined benefit service is the annual actuarial valuation report.

Our defined benefit consultants also provide plan administration reports, a comprehensive plan administration manual and individual pension statements. Clients have access to an on-line retirement and our proprietary Social Security benefit estimate calculation system. Many of these tools are also available through web-based applications.

Executive Benefits

Executive benefit plan design and consultation services, including stock option plans, incentive bonus plans and deferred compensation agreements are available. We also analyze and evaluate insurance programs to fund these options.

Our executive benefit professionals also evaluate carve-out life and LTD programs designed to enhance benefits to key employees, while providing cost advantages to the company. These carve-out programs are designed, implemented and administered within this division.

Change Management

Our change management practice, known as Pecos River, provides an environment that allows management personnel of corporations to grow in their leadership roles. These specialists work with our clients to achieve higher goals in a rapidly changing business world by utilizing a program that challenges the individual and emphasizes team building.

A variety of Pecos River programs are available, including programs designed to support management team integration following a merger or acquisition, general team building programs and programs supporting implementation of system-wide change within an organization.

CONSULTING SERVICES AGREEMENT

This Agreement is by and between [redacted] (hereinafter referred to as "CLIENT") and Aon Consulting Inc., 1035 Seventh North Street, Liverpool, NY 13088 (hereinafter referred to as "SERVICE ORGANIZATION")

A. SCOPE OF SERVICES PROVIDED

Subject to all other terms and conditions of this Agreement, the Service Organization agrees to provide the following services:

- 1) Analyzing continuing plan experience and utilization data, provide customized reports, and make recommendations to the Plan regarding the most effective plan management;
- 2) Attendance at requested plan management meetings;
- 3) Assisting with and providing advisory services with collective bargaining issues related to the health benefits plan;
- 4) Ongoing evaluation of plan designs, plan alternatives, and performing "what if" scenarios and cost management options;
- 5) Examining the appropriateness of alternative health care strategies and programs such as Point-of-Service plans, Consumer Driven Plans, etc.;
- 6) Providing reports on benefit utilization, inflation trends, evaluate and interpret this data to suggest long term benefit design and cost control initiatives;
- 7) Development, communication coordination, and installation of new plan options or plan design changes, conduct group meetings with participants to explain specific benefit provisions, and introduce and communicate coverage changes;
- 8) Serving as a resource to the Plan by providing objective information and advising the Plan on legislative and regulatory developments such as COBRA, HIPAA, State Mandates, etc. and recommending courses of action;
- 9) Strategizing long-term employee benefit objectives;
- 10) Providing plan updates, experience, analysis and other timely information as requested;
- 11) Acting as a resource for any employee benefits issues;

B. TERM OF AGREEMENT

This Agreement shall be in full force and effect for a period of one year from the effective date of this Agreement, which is July 1, 2003.

C. TERMINATION

This Agreement may be cancelable by either party upon written notice to the other party; provided such notice specifies an effective date for cancellation of not less than thirty (30) days from the date of such notice.

The Service Organization shall be entitled to all fees arising under this Agreement earned by the Service Organization on a pro-rata basis through the effective date of cancellation.

The Client shall be entitled to all services arising under this Agreement through the effective date of cancellation.

D. COMPENSATION

As compensation for the independent consulting services provided by the Service Organization, the Client shall pay the annual sum of \$13,500 to the Service Organization payable in quarterly installments of \$3,375.

E. INDEPENDENT CONTRACTOR STATUS

The Service Organization at all times, shall be an independent contractor, and employees of the Service Organization shall in no event be considered employees of the Client. No Agency relationship between the parties, except as expressly provided for herein, shall exist either as a result of the execution of this Agreement or performance there under.

F. CONDITIONS & LIMITATIONS

- 1) The Service Organization does not act as an insurer for the Client and this Agreement shall not be construed as an insurance policy or any contract or agreement of indemnity; it being understood that the Service Organization is in no event financially responsible for payment of satisfaction of claims, lawsuits, or any form of cause of action against the Client.
- 2) The Service Organization's responsibility for the performance of activities as specified in Provision "A" above is conditioned upon the Client's cooperation with the Service Organization in all reasonable manners with respect to the activities of the Service Organization, including but not limited to, responding to the Service Organization and/or Third Parties, as may be needed and making decisions on matters which, as required by this Agreement, or in the professional opinion of the Service Organization, should be made by the Client.
- 3) The services to be provided by the Service Organization are not of legal nature, and the Service Organization shall in no event give, or be required to give, any legal opinion or provide any legal representation to the Client, nor may any communication prepared by the Service Organization be relied upon by the Client as a legal opinion or interpretation. The Service Organization shall in no event be considered as engaged in the practice of law.
- 4) As respects the services provided by the Service Organization any reports rendered to the Client may be relied upon to the extent of the express purposes of such reports.
- 5) This Agreement applies only to the activities expressly referred to herein.
- 6) Neither this Agreement nor any rights hereunder shall be assigned by either party without prior written consent of the other party first having been obtained.
- 7) The terms of this Agreement between the Service Organization and the Client shall be governed by the laws of the state of New York. Any adjudication by any court or competent jurisdiction which invalidates any part of this Agreement shall not act to invalidate any other part thereof.
- 8) This Agreement constitutes the entire understanding and Agreement between the parties hereto, and supersedes all prior and contemporaneous agreements or understandings, written or oral, of the parties hereto. This Agreement may be amended only in writing executed by both parties.
- 9) No waiver of one or more provisions of this Agreement shall constitute a waiver of any other provision hereto.
- 10) This Agreement may be executed in any number of counterparts each of which shall be deemed an original.

11) All notices to be given pursuant to this Agreement shall be in writing and shall be deemed to have been duly given when personally delivered or when mailed by the United States Postal Service first class mail postage prepaid, to the following addresses:

If to Client:

[REDACTED]

Auburn, NY 13021

If to Service Organization:

Aon Consulting Inc.
1035 Seventh North Street
Liverpool NY 13088

IF WITNESS WHEREOF, the parties have executed this Agreement on the date and year first above written

Date: 7/1/03

Aon Consulting, Inc.

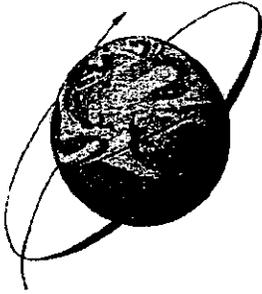
[REDACTED]

By: _____

Date: _____

[REDACTED]

By: _____



Health Insurance
Consulting Proposal
for the

[REDACTED] Area School
Employee's Healthcare Plan

May 2002



Presented by:



Aon Consulting, Inc.
1035 Seventh North Street
Liverpool, NY 13088

Tel: [REDACTED]

Fax: [REDACTED]

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Introduction

The [REDACTED] can meet its objectives for its Health Benefit Plans by developing a partnership with Aon Consulting.

Aon Consulting provides a scope of services as an independent Consultant that includes managing price, utilization, frequency and quality of health care through sophisticated techniques, while focusing at the same time, on ways to maximize quality service, appreciation and an understanding of the plan by your participants.

In addition, the [REDACTED] can be assured it will obtain the best cost for all insurance products due to Aon's large market position with insurance carriers, Third Party Administrators, and other vendors. Aon Consulting maintains strong relationships with all local, regional, and national health insurance providers and vendors.

As part of our service we will conduct a thorough review of your benefit plans and provide short and long term strategies, cost savings opportunities as well as other objectives for your consideration.

We currently work with many municipal clients and school plans throughout Central New York and bring significant experience and expertise to the management of these programs.

Aon Consulting is pleased to present our proposal for Advisory Services. We look forward to the opportunity of assisting you in selecting the best direction for your health benefit programs.

Sincerely,

[REDACTED]

[REDACTED]

Assistant Vice President

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Objectives

Aon Consulting is proposing independent advisory services to assist the [REDACTED] [REDACTED] in the analysis of the design and plan utilization characteristics of the current program as well as assist in managing the cost, services, and development of strategies for on-going management of its overall health program.

Based upon our initial understanding, major objectives would be to:

- ◆ Review, analyze, interpret, evaluate and report on the current health program benefit schedule.
- ◆ Evaluate the plan utilization of benefits and cost drivers and assist the Benefits Committee develop short and long term plan design strategies.
- ◆ Coordinate the implementation of selected plan changes, options, and financial strategies.
- ◆ Make ongoing recommendations on the utilization, benefit levels, selection and performance of insurance carriers/vendors.
- ◆ Obtain the greatest level of benefits available, consistent with current dollars expended and investigate future options to reduce costs and meet other [REDACTED]

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Advisory Services

Initial Benefit Design

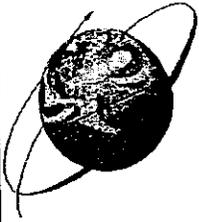
Aon Consulting will provide the following services to assist the [REDACTED] to manage health plan contracts and costs and analyze plan design, performance and claims experience. Aon will provide a broad range of services to include:

- ◆ Data analysis, including an examination of plan documents, claims and utilization experience, employee census and demographics, high risk areas, among other items.
- ◆ Review plan benefit specifications - benefit levels and plan design.
- ◆ Analyze claims experience in comparison to benefit levels.
- ◆ Benchmark the criteria developed in analysis of benefit design and claims experience with similar plans. Benchmarking will include extensive data match (by benefit utilization category, per capita cost etc) from Aon Consulting's local clients as well as our national database.
- ◆ Based upon the claim/benefit evaluation, and benchmarking data, make recommendations, both long-term and short-term on benefit design and plan utilization to meet the [REDACTED]'s cost, benefit and collective bargaining objectives.
- ◆ Attend weekly meetings of the Benefits Committee and provide interim periodic reporting as requested.
- ◆ Analyze and advise on the appropriateness of alternative benefit delivery systems such as self-directed (consumer driven) health plan designs, among others.
- ◆ Provide comprehensive comparative reports and analysis of all findings with recommendations.

This assessment will enable the Plan to:

- ◆ Concisely evaluate the current program's utilization and benefits provided.
- ◆ Quantify the financial ramifications of potential changes in plan design.
- ◆ Compare itself to a variety of other similar programs both locally and nationally.

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Advisory Services

Ongoing

Aon Consulting will continue to work on an ongoing basis to aggressively manage contracts and costs and monitor plan performance and claims experience. Aon will provide the following services to include:

- ◆ Analyzing continuing plan experience and utilization data, provide customized reports, and make recommendations to the Plan regarding the most effective plan management;
- ◆ Providing customized monthly plan financial summary reports designed to assist the [REDACTED] in concisely monitoring plan costs and claims activity;
- ◆ Unlimited attendance at all plan management meetings;
- ◆ Development, communication coordination, and installation of new plan options or plan design changes;
- ◆ Assisting with and providing advisory services with collective bargaining issues related to the health benefits plan;
- ◆ Monitoring performance of insurance carriers, T.P.A.'s and service providers to ensure smooth delivery of benefits and services and assisting your staff with benefits administration issues;
- ◆ Ongoing evaluation of plan designs, plan alternatives, and performing "what if" scenarios and cost management options;
- ◆ Acting on behalf of the Plan in analyzing and negotiating renewal rates with vendors to obtain the most competitive pricing;
- ◆ Providing actuarial services, including, but not limited to:
 - calculating "conventional" premium rates
 - plan financing
 - reserve setting
 - trend forecasting
 - preparation of Budget and supporting documentation
- ◆ Examining the appropriateness of alternative health care strategies and programs such as Preferred Provider Organizations, Point-of-Service plans, etc.;
- ◆ Providing reports on benefit utilization, inflation trends, evaluate and interpret this data to suggest long term benefit design and cost control initiatives.





Advisory Services

Ongoing (*Continued*)

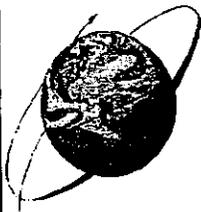
- ◆ Direction of any bidding process for insurance products and services or vendors to include:
 - development of the Request for Proposal (RFP) document which details all carrier/vendor requirements, benefits and specifications for quotation
 - interface with the carriers/vendors during the bidding process
 - preparation of a comprehensive, consolidated comparative report of each proposal received from the RFP process. The report will concisely illustrate cost comparisons, benefits, as well as other evaluation and selection criteria
 - make recommendations to best meet the Plan's objectives and ultimate selection of service providers
- ◆ Development, communication coordination, and installation of new plan options or plan design changes, conduct group meetings with participants to explain specific benefit provisions, and introduce and communicate coverage changes;
- ◆ Updating Plan Documents and Summary Plan Description booklets (SPD's) in accordance with new or changing regulations or benefit provisions;
- ◆ Serving as a resource to the Plan by providing objective information and advising the Plan on legislative and regulatory developments such as COBRA, HIPAA, etc and recommending courses of action;
- ◆ Strategizing long-term employee benefit objectives;
- ◆ Providing plan updates, experience, analysis and other timely information as requested;
- ◆ Acting as a resource for any employee benefits and human resource;

Your Aon Representative has access to Aon's Research & Technical Services Center (RTS).

RTS is the research, technical support and training unit for Aon Consulting. RTS serves as a central resource for local Aon professionals and clients throughout the country. RTS provides timely, accurate information to our clients to manage their human resources through extensive library and information resources, survey data and legislative information.

The staff includes attorneys, actuaries and degreed professionals who have direct, practical experience in legal, benefits and communications, insurance and human resources in both the public and private sectors.

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Specialized Services

Prescription Benefit Consulting

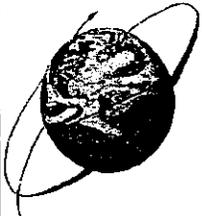
Aon maintains a clinical pharmacist on staff to assist clients with the management of their prescription drug programs.

Our clinical expertise and extensive resources - including comprehensive management databases - helps us identify which plan design elements and Prescription Benefit Management (PBM) vendors will best maximize the return on your benefit dollars as well as improve quality of care and employee satisfaction in this increasingly expensive benefit category.

We will work together with you to create a prescription drug program that considers your organizational and financial objectives, labor relations, bargaining unit requirements, medical plan specifics, and workforce demographics. Our services include:

- ◆ Analyzing your plan design, drug utilization and employee population data to determine overall prescription drug needs and identify opportunities for managing costs.
- ◆ Selecting appropriate PBM vendors for consideration from Aon's national database that provides information about the PBM's network access, discounts, formulary and rebate programs, disease management opportunities, and overall market strength.
- ◆ Preparing state-of-the-art electronic RFPs and plan reports that update performance results, and provide easy-to-access benchmark information and financial/cost projection analysis.
- ◆ Establish and maintain ongoing service strategy and standards for monitoring plan performance and ensuring the success of your prescription benefit program.

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Specialized Services

(Continued)

Actuarial Services

The Government Accounting Standards Board (GASB) has been reviewing financial reporting standards for post-employment benefits for several years. Their purpose is to develop a consistent format for Public Sector reporting of the value of post-employment benefits (other than pensions). Their goal is to provide a standardized accounting methodology. Consistent standards will allow rating agencies and other financial entities to better gauge the financial health of a municipality or public sector organization. Final guidelines are currently expected in the second quarter of 2002.

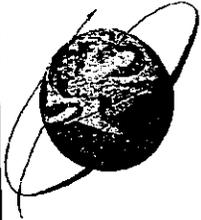
These regulations will ultimately require Public Sector employers to actuarially determine the liability for post-employment benefits and will require budgets to reflect costs and liabilities on an accrual basis. Impact on budgets is expected to be considerable.

Aon maintains in-house actuarial and consulting staff experienced in plan evaluation to assist the [REDACTED] and its component districts in managing these requirements as they emerge.

Ancillary Benefit Services

Advisory services are available for any ancillary employee benefit programs such as group life, dental, long term disability, long term care etc. Cost savings may be achieved through the analysis and/or marketing of these programs.





Professional Fees

We strive to maintain our fees at the lowest level consistent with the highest professional standards of service.

The services outlined in the Advisory Services and Specialized section of this proposal would be financed as follows:

Initial Benefit Design Project \$16,500
billed in three installments of \$5,500

Ongoing Annual Services \$26,500
billed in quarterly installments of \$6,625

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Professional Staff Profiles

Aon Consulting understands how important it is for the [REDACTED] to manage its administrative costs, claims and quality of service under its Health Benefit Plans. Aon Consulting will devote some of its best and most experienced professionals to make this happen.

Consulting activities will be conducted from the Syracuse, NY office. We will provide services through a two person team management program. [REDACTED], Assistant Vice President of the Syracuse office, will be the [REDACTED] primary contact. He will be intimately involved in providing and managing the services to be provided. [REDACTED], Consultant, will work collaboratively with [REDACTED] to complete the steps outlined within the proposed consulting services. This team will be supplemented by additional local or national staff resources as the need arises.

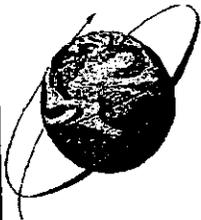
**Aon's local consulting team for the [REDACTED] Area School
Employees' Healthcare Plan:**

[REDACTED] - Assistant Vice President

[REDACTED] - Consultant

Profiles of the Aon Team follow...





Profile

[REDACTED]
Assistant Vice President

Current Assignment

[REDACTED] provides service and support to clients in the areas of employee benefit financial analysis, plan design, communications, marketing, and legal compliance.

Business Experience

[REDACTED] background over the past ten years includes financial and benefit analysis, funding approaches for health and welfare and PPO-POS programs, cost management alternatives, plan implementation, and legal requirements. He has been heavily involved in plan analysis, cost control, financial strategies and benefit design projects with municipalities.

Prior to joining Aon, [REDACTED] spent sixteen years in progressively responsible human resource generalist positions and as Corporate Human Resource Manager for a multi-location manufacturing firm.

Partial Client List

City of Rome, NY

[REDACTED]

Herkimer County

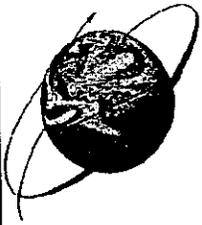
[REDACTED]

[REDACTED]

Education

[REDACTED] has a B.S. degree in Industrial Relations from LeMoyne College, Syracuse, N.Y.





Profile

[REDACTED]
Consultant

Current Assignment

[REDACTED] recently joined the Aon Consulting office in Syracuse, New York. She has experience with open enrollments, employee communications, resolving claims issues, on-site service and reconciling monthly billings.

Business Experience

[REDACTED]'s background includes human resources and benefits administration within the beverage, financial and telecommunications industries.

Education

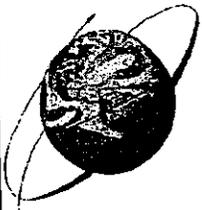
In 1992, [REDACTED] earned a B.S. degree from Rochester Institute of Technology with a major in Criminal Justice.

Professional Activities

Attended training sessions to enhance computer software skills. Pursuing the Certified Employee Benefits Specialist (CEBS) designation.

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About Aon Consulting

Aon Consulting is a global employee benefit and human resource consulting firm providing professional advisory and support services in HR management, compensation systems, actuarial and employee benefit design services and administration.

Headquartered in Chicago, IL, the firm has 110 offices located in 60 countries providing service to over 40,000 clients.

We consider ourselves unique within this market in that we combine truly global state of the art resources with local expertise and service capabilities from our Syracuse, NY office.

Aon Consulting Syracuse provides services to over 100 New York State based clients, including:

- ⊗ [REDACTED], New York - Municipality
- ⊗ [REDACTED] School District
- ⊗ [REDACTED] County - Municipality
- ⊗ [REDACTED] Industries - Metal Casting/Manufacturing
- ⊗ [REDACTED] Corporation - Precious Metal Processing
- ⊗ [REDACTED] County - Municipality
- ⊗ [REDACTED] City School District
- ⊗ [REDACTED] - Municipality
- ⊗ [REDACTED] County - Municipality
- ⊗ [REDACTED], Inc - [REDACTED]
- ⊗ [REDACTED] Central School





Aon Consulting

Partial Client Reference List

[REDACTED] COUNTY

[REDACTED]
Director of Labor Relations
[REDACTED] County Office Bldg
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] COUNTY

[REDACTED]
Personnel Officer
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] CENTRAL
SCHOOL

[REDACTED]
Superintendent
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] COUNTY

[REDACTED]
Director of Personnel
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] NY

[REDACTED]
Treasurer
City Hall
[REDACTED]
[REDACTED]

[REDACTED] CITY SCHOOL
DISTRICT

[REDACTED]
Business Administrator
[REDACTED]
[REDACTED]
[REDACTED]



**Aon Consulting
Commission Guidelines**

March 2004

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Summary of Prohibited Transaction Exemption 77-9

A. PTE 77-9 Disclosure Requirement

PTE 77-9 imposes a disclosure requirement upon a commission-compensated consultant who recommends the purchase of an insurance product by the plan. The purpose of the disclosure requirement is to "make the approving fiduciary aware, generally, of a potential for conflict of interest on the part of the person recommending the transaction." Thus, PTE 77-9 is premised upon the assumption that no consultant can truly be independent as long as he is compensated by commissions. However, DOL believes that point-of-sale disclosure will encourage consultants to recommend the most suitable insurance contract for the client, rather than the insurance contract with the highest commission.

PTE 77-9 requires a consultant to disclose in writing:

1. The initial and renewal sales commission he will receive from the insurer whose product he has recommended, expressed as a percentage of the product's gross annual premium; and
2. If the consultant is an affiliate of the insurer, or if the ability of the consultant to recommend other insurance products is limited by an agreement with the insurer, the consultant must disclose the nature of such affiliation or limitation. A consultant is an "affiliate" of an insurer, if the consultant controls, is controlled by, or is under common control with the insurer.
3. "Penalties or adjustments" which may be imposed upon contract termination.

The first part of the disclosure requirement is self-explanatory. The second part of the disclosure requirement appears to be directed at considerations, other than commissions, which may affect the consultant's independent judgment in recommending the product of a particular insurer. The third requirement was buried in a proposal to modify PTE 77-9. The proposal would have required the consultant to disclose certain objective information (e.g., cash surrender value, rates of return, and contract termination penalties). With this objective information, the plan fiduciary supposedly would not rely upon the consultant's advice, but would exercise his independent judgment.

The insurance industry severely criticized the disclosure requirement for cash values and rates of return, but did not criticize the contract termination penalty disclosure requirement. DOL withdrew its proposal on cash surrender value and rates of return because there exists no generally recognized method that fairly, completely and accurately determines rates of return for insurance contracts. Since no adverse comments were received on the contract termination penalty disclosure requirement, the proposal was adopted.

B. Background

1. ERISA's Conflict of Interest Prohibited Transaction Rules. ERISA prohibits a plan fiduciary from exercising a fiduciary function if he has a conflict of interest which may affect the exercise of his best judgment on behalf of plan participants. [ERISA Section 406(b) and IRC Sections 4975(1)(E) and (F)] Thus, a plan fiduciary cannot buy an insurance contract to finance an employee benefit plan if he receives a commission on the sale. The insurance commission is treated like any other illegal kickback under ERISA's prohibited transaction rules.

It is not clear whether or not ERISA's anti-kickback prohibition applies to consultants. In other words, it is not clear whether or not consultants who help place insurance are fiduciaries.

2. Is a Consultant a Fiduciary?
Under ERISA, the term "fiduciary" includes anyone who exercises discretionary control over the plan or its assets. While the ordinary functions of consultants may not be considered fiduciary functions, the ERISA House/Senate Conference Committee report warns "that there will be situations where consultants and advisors may, because of their special expertise, in effect, be exercising discretionary control over the plan or its assets." DOL's regulation (§2550.408b-2) interpreting the service provider exemption contains an example of such a situation:

"D, a trustee of the plan P with discretionary control over the management and disposition of plan assets, relies on the advice of C, a consultant of P as to the investment of plan assets, thereby making C a fiduciary of the plan."

Thus, whenever a plan fiduciary, who would otherwise be independently exercising a fiduciary function, informally delegates this function to another person by relying upon a recommendation rather than develop the knowledge necessary to make an independent judgment, the person making the recommendation becomes a fiduciary. This means that whether a consultant is a fiduciary cannot be determined solely by the consultant's conduct, but is also determined in large part by the conduct of the fiduciary to whom advice is given. In other words, the less a plan fiduciary does to arrive at a decision on behalf of the plan, the greater the probability that the consultant is a fiduciary.

As indicated above, there is no clear cut test to determine whether a consultant is a fiduciary. Moreover, DOL announced that whether recommendations concerning the purchase of insurance contracts constitute "investment advice" can only be determined on a case-by-case basis. (A person who renders "investment advice" is also a fiduciary under ERISA.) DOL's announcement was in response to a request for a ruling that the normal sales presentations and recommendations by insurance agents, brokers, or pension consultants would not be considered investment advice.

3. Reason for PTE 77-9.
ERISA's conflict of interest prohibited transaction rules threaten the ability of commission-compensated consultants to recommend insurance products to employee benefit plans subject to ERISA. DOL recognized that:

"without an exemption, insurance agents and brokers will be precluded from receiving

their customary form of compensation for the furnishing of services to plans (i.e., sales commissions) and would, therefore, be compelled to curtail the provision of many services that they currently provide to plans [T]hese developments would severely disrupt long established business practices and relationships and would create hardships for plans, plan sponsors and plan participants For essentially the same reasons outlined above, the applicants have also requested an exemption to permit an insurance company to sell insurance to a plan when such insurance company is a party-in-interest "

In response to this problem, DOL created PTE 77-9 which provides three exemptions in connection with the sale of an insurance product to an employee benefit plan through a consultant who may be a fiduciary. It allows:

- the insurer to sell an insurance product to the plan through the consultant without engaging in a party-in-interest prohibited transaction [ERISA prohibits the sale of any property (e.g., insurance contract) between a plan and party-in-interest];
- the consultant to cause the plan to purchase an insurance product from the insurer without engaging in a party-in-interest prohibited transaction; and
- the consultant to accept a commission from the insurer without violating the conflict of interest prohibited transaction rules.

4. Scope of Summary.

PTE 77-9 not only covers potential prohibited transaction problems of consultants; it also covers potential problems of insurers, mutual funds, and mutual fund principal underwriters. This summary of PTE 77-9 covers only those portions of PTE 77-9 that are relevant to consultants.

C. Transactions Covered

The following transactions are exempted from the prohibited transaction rules, if the conditions described elsewhere in the summary are satisfied:

1. The execution by a consultant of the purchase of an insurance contract with plan assets.
2. The direct or indirect receipt of commissions by a consultant from an insurance company in connection with the purchase of an insurance contract with plan assets.

NOTE: The term "insurance contract" includes an annuity contract, a bond written by an insurance or surety company and an administrative services only contract with an insurance company.

D. Basic Conditions

The following basic (i.e., nondisclosure) conditions must be met in order for the transactions described above to be exempted:

1. The execution of the purchase, and the receipt of commissions by the consultant, must be in the ordinary course of his business.
2. The purchase of the insurance contract by the plan must be on terms at least as favorable

to the plan as an arm's-length purchase from an unrelated party.

3. The total of all fees and commissions received by the consultant for administrative and brokerage services must be "reasonable." Generally, whether compensation is reasonable depends on the facts and circumstances of each case. (If any compensation is deemed unreasonable, the amount involved in excess of what is considered "reasonable" is subject to civil penalties and excise taxes.)

E. Disclosure Conditions

The following disclosure conditions must also be met for the transactions described above to be exempted.

1. Outside Consultant.
The consultant, or his affiliate, cannot be a plan administrator, a plan trustee, a fiduciary who is expressly authorized in writing to manage, acquire, or dispose of plan assets on a discretionary basis; or an employer any of whose employees are covered by the plan.

NOTE: A separate class exemption (PTE 79-60) permits a consultant to sell insurance to its own employee benefit plans.

2. Independent Plan Fiduciary.
The consultant must furnish the required disclosures to an independent plan fiduciary. Therefore, the fiduciary may not be an affiliate of the consultant or the insurance company whose insurance contract is recommended. The fiduciary may not receive any consideration (directly or indirectly) from the consultant or the insurance company or have any other conflict of interest which would affect his judgment on the selection of the insurance contract. An employer whose employees are covered by the plan can be an independent plan fiduciary.

NOTE: An "affiliate" and examples of its impact on certain transactions is illustrated in the Questions and Answers section of the disclosure guidelines.

3. Required Disclosures.

The consultant must disclose the following information in writing and in such a manner that an independent plan fiduciary having no specialized expertise in insurance can understand it.

- (a) The initial and renewal sales commission he will receive from the insurer whose insurance contract he has recommended, expressed as a percentage of the product's gross annual premium.
- (b) If the consultant is an affiliate of the insurance company, or if the ability of the consultant to recommend other insurance contracts is limited by an agreement with the insurance company, the consultant must disclose the nature of such affiliation or limitation.
- (c) Any charges, penalties or adjustments which may be imposed under the recommended insurance contract in connection with the exchange or termination or such contract.

4. Timing of Disclosure.

The consultant must furnish the required disclosures to the independent plan fiduciary before the purchase of the insurance contract by the independent plan fiduciary.

5. Acknowledgment.

The independent plan fiduciary must acknowledge in writing receipt of the required disclosures prior to the execution of the purchase

6. Timing of Acknowledgment.

The independent plan fiduciary must sign the acknowledgment and approve the purchase on behalf of the plan before the execution of the purchase.

7. Repetition of Disclosure.

The written disclosures and acknowledgments described must be repeated in connection with additional purchases of insurance contracts, if:

- (a) The contract being recommended for purchase is materially different from the contract which the independent plan fiduciary previously purchased; or
- (b) more than three years have passed since disclosure was last made.

F. Retention of Records

- 1. The consultant must retain the copies of the written disclosures and acknowledgments described above for at least six years from the date of purchase of insurance contracts by the plan. The consultant must also retain any additional information or documents provided to the independent plan fiduciary in connection with the required disclosures.
- 2. The retained records must be available for examination by DOL, IRS, plan participants and beneficiaries, any employer whose employees are covered by the plan, and any union whose members are covered by the plan.
- 3. A prohibited transaction will not occur if records are lost or destroyed before the end of the six year period through no fault of the consultant.

QUESTIONS AND ANSWERS
ON
PTE 77-9 COMPLIANCE

The following Q&A's explain how to comply with PTE 77-9.

1. *Must Aon Consulting disclose commissions and finder's fees from third party service providers (e.g., TPAs, HMOs, PPOs, utilization review organizations, etc.) that are not insurers?*

Yes. Commissions from all third party service providers must be disclosed. Therefore, when reading the guideline, understand that the terms "insurer," "insurance," and "insurance contract" also include "third party service provider," "third party services," and "third party service contract."

2. *For which brokerage transactions is Aon Consulting prohibited from serving as insurance broker?*

Aon Consulting may not serve as insurance broker or agent when a client intends to purchase an insurance contract to finance an employee welfare or pension benefit plan covered by ERISA's prohibited transaction rules, regardless of its size, if Aon, or its affiliate, is:

- A plan administrator.

The plan administrator is the person so designated under the plan documents. If there is no such designation, the employer or, in the case of a Taft-Hartley plan, joint board of trustees will generally be the "plan administrator."

A person providing administrative services need not be the "plan administrator" and should not accept designation as "plan administrator" unless it has been delegated authority to terminate the plan, to determine the plan's benefit schedule, to purchase insurance contracts to finance the plan, to hire persons providing services relating to the plan, etc.

- A plan trustee.
- An employer, any of whose employees are covered by the plan.

NOTE: DOL has granted a separate prohibited transaction exemption (PTE 79-60) so that Aon can serve as insurance broker when it purchases insurance contracts to finance its own employee benefit plans.

- A fiduciary expressly authorized in writing to manage, acquire or dispose of plan assets on a discretionary basis.

3. *To whom must Aon Consulting give the disclosure form?*

Any client generating commissions for Aon Consulting by purchasing an insurance contract to finance an employee welfare or pension benefit plan covered by ERISA's prohibited transaction rules, regardless of its size.

Aon Consulting's PTE 77-9 disclosure should not be confused with the client's ERISA reporting and disclosure requirements. ERISA's prohibited transaction rules and ERISA's reporting and disclosure rules are entirely separate and unrelated. PTE 77-9 disclosure forms are given to Aon Consulting clients to protect Aon Consulting (i.e., to eliminate Aon Consulting's potential conflict of interest liability under ERISA's prohibited transaction rules), not to satisfy the client's ERISA reporting and disclosure obligations.

For example, although an insured welfare plan with fewer than 100 participants is exempt from most ERISA reporting and disclosure requirements (but a summary plan description and summary of material modifications must be furnished to plan participants), Aon Consulting must still furnish the client with a PTE 77-9 disclosure form if the plan is covered by ERISA's prohibited transaction rules.

4. *Which plans are covered by ERISA's prohibited transaction rules?*

All plans are subject to the prohibited transaction rules and, therefore, to Aon Consulting's PTE 77-9 disclosure policy except the following:

- Governmental plans;
- Church plans (such as a plan of a church-controlled hospital);
- Plans without employees (e.g., AD&D plan for alumni association);
- State-mandated workers' compensation plans, unemployment compensation plans or disability plans;
- Unfunded deferred compensation plans for select groups of management or highly compensated employees;
- Excess benefit plans;
- IRAs established by individuals;
- Keogh plans or welfare plans covering only partners, sole proprietors or their spouses.

In addition, voluntary, employee-pay-all group insurance programs which the employer does not endorse are also not covered by ERISA. As a practical matter, this exemption will rarely apply, since the plan sponsor often endorses the program (e.g., by putting the employer's name on the booklet generated by the insurer).

5. *If Aon Consulting's compensation is fixed or based on time and expenses, and the client agrees to pay the compensation less any commission Aon Consulting may receive from the insurer, must Aon Consulting furnish the client with a disclosure form simply because Aon Consulting will receive a commission?*

No, if Aon Consulting and the client reasonably expect that Aon Consulting's compensation will be greater than the commission.

The purpose of the disclosure form is to make clients aware of Aon Consulting's potential conflict of interest in recommending the insurance contract paying the highest commissions,

rather than the most suitable contract for the plan. In the situation described in the question, Aon Consulting does not have a conflict of interest because Aon Consulting's compensation will remain the same regardless of which insurance contract is selected.

The compensation arrangement described in the question should be documented (e.g., letter to client outlining Aon Consulting's services and compensation for those services). In any event, the bill sent to the client must show Aon Consulting's total compensation, the offsetting commission, and the amount the client will pay.

6. *If Aon Consulting negotiates its commission with the insurer, must Aon Consulting furnish the client with a disclosure form?*

Yes.

7. *If Aon Consulting negotiates with the client the amount of commissions that Aon Consulting will receive from the insurer, must Aon Consulting furnish the client with a disclosure form?*

Yes.

8. *The PREAMBLE to the model Aon Consulting disclosure form state that Aon Consulting is complying with PTE 77-9 to protect the client, as well as Aon Consulting. How does the disclosure form protect the client?*

The client is the plan fiduciary ultimately responsible for the prudent selection of the plan's funding instrument. The disclosure form will allow the client to make a more informed and independent judgment. Information relating to "penalties or adjustments" will help the client evaluate the insurance contract itself. Information relating to commissions and affiliations will help the client evaluate Aon Consulting's advice or recommendations.

9. *What restrictions are placed upon the client to whom Aon Consulting furnishes a disclosure form?*

The client must not be an affiliate of Aon or the insurer whose insurance contract is selected. Moreover, the client may not receive any consideration (directly or indirectly) from Aon or the insurer. In other words, the client must be an independent plan fiduciary.

10. *May Aon Consulting personnel furnish the client with the insurer's disclosure form instead of Aon Consulting's disclosure form?*

No. However, information on the insurer's form may be used to complete Aon Consulting's disclosure form.

11. *How many disclosure forms must be furnished to the client?*

A disclosure form need not be prepared for each insurance contract which the client is considering. Rather, the form must be prepared only for the contracts ultimately selected by the client.

Since different contracts may have different commission schedules which must be disclosed, and will probably have different "penalties and adjustments" to be disclosed, and it is recommended that a separate disclosure form be furnished for each contract purchased by the client, even

though more than one contract may be used to finance the same plan.

12. *When must Aon Consulting furnish the DISCLOSURE STATEMENT to the client?*

After the client selects an insurance contract, but before it is committed to the insurance contract.

13. *When must the client sign the ACKNOWLEDGMENT?*

Before it makes a commitment to a particular insurance contract. Generally, the client is committed to an insurance contract on the earlier of the following events:

- Aon Consulting binds the insurer, if Aon Consulting has binding authority;
- the application for the insurance contract is executed; or
- the first premium deposit is made.

14. *What is an example of a typical sequence of events relating to the furnishing of a disclosure form?*

- Aon Consulting requests proposals from insurers. Each insurer should be asked to identify the pages or sections of its proposal where the insurance contract's "penalties or adjustments" are described (see Q&A 23).
- Aon Consulting presents the client with its analysis of the proposals.
- The client selects the insurance contract(s).
- Aon Consulting furnishes the disclosure form to the client.
- The client executes the ACKNOWLEDGMENT.
- Aon Consulting binds the insurer, or the client executes the application or makes an initial premium deposit, whichever is applicable.

15. *If Aon Consulting becomes a broker of record on all of a new client's insurance contracts, when must Aon Consulting furnish a PTE 77-9 disclosure form on an existing contract financing an ERISA plan?*

The next time this insurance contract is renewed, amended or exchanged.

16. *Once the disclosure required by PTE 77-9 has been made, must it be repeated?*

Yes. For renewals, the disclosure form must be furnished to the client once every three years. For new or replacement insurance contracts, the disclosure form must be furnished to the client before the client makes the purchase.

17. *What records must be maintained by Aon Consulting?*

Aon Consulting must retain copies of the executed disclosure forms and any additional information or documents furnished to the client in connection with its purchase. For example, Aon Consulting must keep copies of the proposal, if any, describing the insurance contract selected by the client.

Three copies of the disclosure material are necessary. One copy for the client, one copy for the Aon Consulting client file, and one copy for Aon Consulting office PTE 77-9 file. The Aon

Consulting office PTE 77-9 file will consolidate all PTE 77-9 disclosure material furnished to Aon Consulting clients. It will be organized in alphabetical order by client and each client's disclosure material will be organized in chronological order.

18. *Will PTE 77-9 be available to an Aon consultant if an Aon Risk producer introduced the client to the consultant and the Aon Risk producer is an outside director, or otherwise an affiliate, of the client?*

Yes, only if the consultant is not an affiliate of the client and the Aon Risk producer does not act on behalf of the client.

Under PTE 77-9, Aon or its affiliates cannot be the plan administrator, plan trustee, employer, etc. (the outside consultant requirement). In addition, the client cannot be an affiliate of Aon or the insurer (the independent plan fiduciary requirement). The purpose of these requirements is to ensure that Aon Consulting's disclosure form is furnished to a party that is truly independent of Aon and the insurer so that the disclosure is meaningful.

Definitions. The affiliates of Aon include:

- any officer, director or employee of Aon; or
- any person directly or indirectly controlling, controlled by, or under common control with Aon (e.g., Combined Insurance Company of America is an affiliate of Aon).

The affiliates of an Aon employee include:

- a relative of an Aon employee;
- other employees of Aon;
- any corporation of which the Aon employee is an officer, director, or employee; or
- any partnership in which the Aon employee is a partner.

The affiliates of an insurer include:

- any officer, director or employee of the insurer; or
- any person directly or indirectly controlling, controlled by, or under common control with the insurer.

Analysis of Question and Answer.

a. Outside Consultant Requirement.

1. Aon Risk Producer. The client, as a corporation of which the Aon Risk producer is a director, is the Aon Risk producer's affiliate. Accordingly, PTE 77-9 is not available to the Aon Risk producer because his affiliate (i.e., the client) is an employer whose employees are covered by the plan.
2. Aon Consulting. The Aon Risk producer, as an employee of Aon, is Aon's affiliate. As noted above, the client is his affiliate. However, affiliates of Aon's affiliates are not Aon affiliates. Hence, the client is not Aon's affiliate, and PTE 77-9 is available to Aon Consulting, if Aon acts through another employee (i.e., the Aon Consulting consultant) in connection with the sale of insurance to the plan.

- b. Independent Plan Fiduciary Requirement. The Aon Risk producer, as an employee of Aon, is Aon's affiliate. Moreover, the Aon Risk producer, as an employee under common control with other Aon employees, is an affiliate of Aon's other employees.

Accordingly, PTE 77-9 is not available to Aon Consulting or any of its employees, if the Aon Risk producer acts as the independent plan fiduciary. However, PTE 77-9 is available, if someone else acts as the independent plan fiduciary, and if that person is not an affiliate of Aon, the employees of Aon, or the insurance companies whose insurance contract is recommended.

19. *Can an Aon employee sell an insurance contract to finance an ERISA plan if he is the relative of the plan administrator, plan trustee, etc.?*

No. However, another Aon employee is not prevented from selling to the plan merely because the Aon employee happens to be a relative of the plan administrator, plan trustee, etc.

Aon or its affiliates cannot be the plan administrator, trustee, etc. Aon's affiliates include Aon Consulting employees. An Aon employee's affiliates include his or her relatives. Aon's affiliates, however, do not include Aon employees' relatives.

Thus, Aon Consulting can serve as an insurance broker or agent when a client intends to purchase an insurance contract to finance an employee benefit plan even though an Aon employee is the relative of the plan trustee, etc., so long as that Aon employee is not involved in the purchase.

While an Aon employee may be tempted to sell insurance to a relative and then have another Aon employee execute the documents, this method of circumventing the affiliation rules obviously does not have the approval of the Department of Labor. On the other hand, if the Aon employee simply referred his relative to another Aon employee before the sale, DOL might not object to this limited involvement.

The term "relative" means ancestor (e.g., mother, grandfather), brother, sister, lineal descendant (e.g., son, granddaughter), spouse, spouse of brother or sister, or spouse of lineal descendant.

20. *What is included in the term "insurance contract"?*

For PTE 77-9 purposes, the term "insurance contract" includes an annuity contract, a bonding contract, an insurer's "administrative services only" contract, and fiduciary errors and omissions insurance contracts purchased to protect the plan, whether or not such contracts are purchased with plan assets. The term would also include any property or casualty insurance purchased with plan assets. PTE 77-9 disclosure is not required for fiduciary insurance purchased with either employer assets or the plan fiduciary's personal assets for the purpose of protecting the fiduciary from liability to the plan. As explained in Q&A I, the term "insurance contract," "insurer," and "insurance" should be read to include "third party service contract," "third party service provider," and "third party services."

Also, based on existing guidance from the DOL, it is not clear whether commissions which are generated from stop-loss insurance would need to be disclosed to the client. If the existence of the stop loss coverage is communicated to employees or the coverage is paid with employee contributions, a disclosure would be required. Even if this is not the case, it is recommended, but not absolutely required, that we disclose the existence of stop-loss commissions to our clients.

21. *For commission-based accounts, must supplemental commissions be disclosed?*

Yes. We refer to supplemental commissions as "Compensation for Services to Underwriters (CSU)." If the CSU is known, disclose it. If the CSU is unknown, the disclosure form will specify the CSU, if any, will not be known until the end of the plan year (i.e., when the Schedule A of the Annual Return/Report Form 5500 becomes available). Offices are given the discretion whether or not a client is given credit for the CSU.

If a CSU arrangement is in place (or may be in place), you may include the following language on the disclosure form:

"In addition to our agreed upon commission arrangement, Aon Consulting may be eligible for additional administrative payments or commissions from [insurer] through a Compensation for Services to Underwriters (CSU) arrangement. This arrangement is applicable if a large number of our clients choose to purchase insurance with [insurer]. In the event we qualify for CSU payments, the proportionate amount associated with XYZ Company's annual premiums might be included on your Schedule A to the Form 5500. However, this amount is not included in your retention/expense factors, and has no impact on your rates."

Also, at least one insurer has a program that pays differing amounts based on whether the amount of the CSU is shown on the Form 5500. Under the one arrangement (e.g., "Marketing Advisor Program") the amount of the CSU is not shown on the Form 5500. Under the second arrangement (e.g., "Broker Bonus Program"), the CSU is shown on the Form 5500. If the CSU is agreed to be disclosed on the Form 5500, the amount of the CSU is higher than if the amount were not disclosed. Given the choice, a consultant should choose the program that shows the CSU on the Form 5500.

22. *For fee-based accounts, must CSU arrangements be disclosed?*

In contrast to the rules that apply to commission-based clients, the existence of a CSU arrangement needs to be disclosed to a fee-based account only if the CSU is shown on the Schedule A. Offices are given the discretion whether or not a client is given credit for a CSU.

23. *What insurance contract provisions impose "penalties or adjustments"?*

Nobody, including the Department of Labor, knows what the phrase "penalties or adjustments" means. Moreover, the disclosure burden of PTE 77-9 has been placed solely upon insurance agents and brokers. The insurer whose contract has been purchased is not required to make any disclosure to the client, except in its capacity as an employer of insurance agents. If the disclosure material furnished by an insurer to an independent broker is inadequate, it is not clear whether reliance by the broker on the disclosure material would be a good defense against a prohibited transaction charge by the client.

Nevertheless, Aon Consulting employees should attempt to obtain a written statement from the insurer identifying those contract provisions which impose "penalties or adjustments." A sample letter soliciting such information is in the disclosure guideline. The letter may be sent separately or incorporated into a request for a proposal.

The following illustrative list of "penalties and adjustments" is based on the assumption that "penalties or adjustments" disclosure is aimed at extraordinary administrative expenses or

reserve requirements not incorporated in the insurer's premium rate structure.

WELFARE CONTRACT
PENALTIES OR ADJUSTMENTS

- Terminating with less than 30 days notice
- Reserve forfeitures for cancellation on non-anniversary date
- State Premium Taxes under minimum premium plans
- Mid-year pooling and retention adjustments
- Interest on deficits carried forward

"Penalties or adjustments" may be disclosed to the client in Aon Consulting's analysis of the proposals or the proposals themselves. If this approach is taken, the disclosure form should note that the "penalties or adjustments" are disclosed in the analysis or proposals. (As noted in Q&A 14, the proposal for the contract selected by the client should then be attached to the Aon Consulting file copy of the disclosure form.)

24. *If the insurance contract is purchased with employer assets rather than plan assets held in trust for the benefit of the employees, must a disclosure form be furnished to the client?*

Yes. Although an argument can be made that the purchase does not involve a fiduciary decision involving the use of plan assets, it is highly unlikely the argument would prevail in the courts. ERISA imposes personal liabilities on fiduciaries who cause a plan to engage in either direct or indirect prohibited transactions.

25. *As noted in Question #4, unfunded, "top-hat" pension plans are excluded from the commission disclosure requirements. Is there a similar exemption for top-hat welfare plans, such as split-dollar arrangements that are welfare plans?*

No. Top-hat welfare plans that are paid from the employer's general assets or provided exclusively through insurance are exempt from ERISA's reporting and disclosure requirements, but not the law's fiduciary requirements governing commission disclosure. However, if we are not providing investment advice to the client, we would not be a fiduciary subject to the disclosure requirement. See Summary of PTE 77-9, B.2., "Is a Consultant a Fiduciary?"

26. *Can commissions from one plan be used to offset consulting fees under another plan?*

Yes, in certain limited instances. However, the following rules apply:

- Commissions from a health & welfare plan cannot be used to offset fees under a retirement plan.
- Commissions from a health & welfare plan cannot be used to offset fees for a compensation project.
- Commissions from a voluntary, employee-pay-all plan cannot be used to offset fees under a separate plan (but see discussion below related to combining multiple health & welfare

coverages in the same plan).

However, as described below, in certain instances commissions from one health & welfare plan can be used to offset plan-related expenses from another plan if both plans are predominantly financed with employer contributions.

Limited "Pooling" of Commissions Allowed

Commissions from one health & welfare plan can be used to pay plan-related expenses under another if both plans are predominantly paid for by the employer (e.g., employee contributions, both pretax and after-tax, account for 50% or less of the plan's premium cost). This is referred to as "pooling" commissions.

However, if employee contributions (pretax and after-tax) account for 51% or more of the plan's costs, pooling commissions is prohibited. For example, commissions from a separate employee-pay-all plan cannot be pooled with another health & welfare plan.

However, keep in mind that a client can accomplish pooling by including multiple health & welfare coverages, including voluntary employee-pay-all coverages, in the same plan. Typically, this is accomplished by using a wrap-around plan document to incorporate the various insured coverages. Of course, the plan document structure must be communicated to employees and the client would need to file a single Form 5500

MODEL LETTER TO INSURER REQUESTING
"PENALTIES OR ADJUSTMENTS" DISCLOSURE MATERIAL

This letter may be sent separately or its contents may be incorporated into a request for a proposal.

Letter

Re: Prohibited Transaction Exemption 77-9 (PTE 77-9)

Aon Consulting is seeking material prepared by your company to be used by insurance agents or brokers pursuant to the requirements of PTE 77-9 to disclose:

"Any charges, fees, discounts, penalties, or adjustments which may be imposed under a recommended contract in connection with the purchase, holding, exchange, termination or sale of such contract."

The disclosure burden of PTE 77-9 has been placed upon insurance agents or brokers. The insurance company whose contract is recommended by the agents or brokers is not required to make any disclosure to the independent plan fiduciary except, perhaps, in its capacity as an employer of insurance agents. An insurance company is not prevented, however, from developing disclosure material on behalf of agents or brokers who recommend its contracts. [See 44 Federal Register 1479 (1/5/79).] Such a disclosure will, of course, aid the agent or broker in the sale of insurance company contracts.

If you have developed any disclosure materials in connection with the requirement quoted above, we would appreciate receiving a copy. This request is not limited to the disclosure of "penalties or adjustments" in insurance contracts used to fund pension plans. Rather, it includes the disclosure of "penalties or adjustments" in any insurance contract(s) used to finance death benefits; disability benefits; hospital, surgical, and medical benefits; and other types of benefits provided under welfare plans.

MODEL
TRANSMITTAL LETTER TO CLIENT

[Personalize the first paragraph to the specific situation, e.g.:

1. "We are in the process of completing arrangements for the insurance contract for your XYZ benefit plan."
2. "On (date), you authorized Aon Consulting to renew the insurance contract for your XYZ benefit plan. The Department of Labor's Prohibited Transaction Exemption 77-9 requires that we disclose our commission schedule once every three years for contract renewals."
3. "We are in the process of updating our files and note that we have not sent you a Disclosure Statement within the last three years."

I have attached to this letter a Disclosure Statement which formally notifies you Aon Consulting will receive commissions from the insurance carrier (or other third party service provider (e.g., TPA, HMO, etc.)) who services your employee benefit plan. Would you please acknowledge this disclosure by signing and returning the Statement to me. The Preamble to the Statement explains why the disclosure and acknowledgment are necessary.

If you have any questions, please call. Thank you for your cooperation in this matter.

PTE 77-9 DISCLOSURE FORM
INSTRUCTIONS FOR AON CONSULTING PERSONNEL

Attached is a model disclosure form. The form consists of three parts: Preamble, Disclosure Statement, and Acknowledgment. The purpose of each form is to make clients aware of Aon Consulting's potential for conflict of interest in recommending the services of an insurer or other third party service provider while accepting commissions from the third party.

Clients must execute the disclosure form before making a commitment to purchase services.

PTE 77-9 is premised upon DOL's assumption that no consultant can truly be independent as long as he is compensated by commissions. However, DOL believes that before-the-sale disclosure will encourage a consultant to recommend the most suitable third party service provider for the client rather than the service provider paying the highest commissions.

The attached forms are generic; they contain blanks to be filled in, as well as information that may not be relevant in all cases. Therefore, you must revise the form to fit your particular situation by filling in the blanks with the necessary information and by crossing out the irrelevant information.