

MEMO# 10548

December 10, 1998

INSTITUTE COMMENT LETTER ON DOL'S PROPOSED CLAIMS PROCEDURE REGULATIONS

[10548] December 10, 1998 TO: PENSION COMMITTEE No. 85-98 PENSION OPERATIONS
ADVISORY COMMITTEE No. 68-98 RE: INSTITUTE COMMENT LETTER ON DOL'S PROPOSED
CLAIMS PROCEDURE REGULATIONS

_____ The Institute
has submitted a comment letter to the Department of Labor in response to the Department's request for comments on the proposed revision of the claims procedure regulations. The Institute comment letter makes the following points: 1. With respect to retirement plans, the current claims procedures have worked and continue to work well. Changing the existing regulations as applied to retirement plans to reflect concerns unique to health plan claims would result in needless change that would come at great cost to employers, plans and participants. Uniformity of claims procedure standards among all employee benefit plans should not be a goal of revised regulation, because benefits provided by health plans and the claims that arise in the health care context are substantially different than benefits provided by retirement plans and the nature of claims that arise there. 2. To the extent that the Department applies the proposed regulation to retirement plans, the Department should clarify that participant inquiries and instructions to entities serving as plan recordkeepers do not constitute "benefit requests" described in the proposed regulation. Specifically, the Department should clarify that, with respect to retirement plans, the terms "benefit request" and "claims for benefit" refer to requests and claims for retirement income, i.e., to the payment of benefits, and not to ancillary features that the plan may offer. Institute members provide nondiscretionary recordkeeping and administrative services to retirement plans. These services include responding to participant requests for general plan information and for basic information relating to a participant's own individual account balance in a plan. The Department should clarify that such requests are not "benefit requests" under the proposed regulation. Similarly, Institute members receive transactional instructions from participants, and the Department should clarify that such instructions are not "benefit requests" under the proposed regulation. 3. Under the proposed regulation, a "benefit request" is deemed received by the plan when a claimant "makes a communication reasonably calculated to bring the request to the attention of persons responsible for benefit claims decisions." The Department should clarify that when retirement plan participants contact a plan's third-party recordkeeper via the recordkeeper's automated voice response unit (VRU) or web site, that contact is not a communication "reasonably calculated to bring the request to the attention of persons responsible for benefit claims decisions." Similarly, the Department should clarify that participant inquiries and transactions conducted via contact with "live" telephone

representatives of third-party recordkeepers do not meet the regulatory standard set forth.

4. The proposed regulation provides that to the extent a request for benefits fails to comply with a plan's claims procedure, the plan administrator must notify the claimant that the request does not comply and describe the plan's procedures within five days of receipt of the request for benefits. The Institute recommends that the five-day timeframe be extended to thirty days for retirement plans. The Institute further recommends that plan administrators be permitted to provide this notification orally, rather than in writing. A copy of the comment letter is attached. Russell G. Galer Senior Counsel Attachment

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