

MEMO# 10311

September 24, 1998

DOL ISSUES PROPOSED REGULATIONS ON PLAN CLAIMS PROCEDURES AND SUMMARY PLAN DESCRIPTIONS

[10311] September 24, 1998 TO: PENSION COMMITTEE No. 65-98 PENSION OPERATIONS
ADVISORY COMMITTEE No. 47-98 RE: DOL ISSUES PROPOSED REGULATIONS ON PLAN
CLAIMS PROCEDURES AND SUMMARY PLAN DESCRIPTIONS

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Department of Labor has issued proposed regulations (1) revising the minimum requirements for benefit claims procedures of employee benefit plans covered by Title I of the Employee Retirement Income Security Act of 1974 (ERISA) and (2) amending the Summary Plan Description (SPD) regulations to clarify the information that SPDs must include. Although these regulatory proposals are mostly directed at group health plans, provisions identified below would apply to retirement plans. A. Benefit Claims Procedures The proposed regulation regarding plan benefit claims procedures would establish new standards for the processing of group health, disability, retirement and other employee benefit claims filed by participants and beneficiaries. Generally, the new standards are intended to ensure more timely benefit determinations and improve participant access to information upon which a benefit determination is made. The proposed regulatory changes that apply to retirement plans include the following: (1) New Disclosure Requirements. The proposal contains several new disclosure requirements that would be applicable to all plans. First, the proposal reinforces the current requirement that a claims procedure will be considered "reasonable" only if it is described in the Summary Plan Description (SPD). Specifically, the proposal clarifies that descriptions of all of a plan's benefit claims procedures, including procedures for filing claim forms, providing notification of benefit determinations and reviewing denied claims, as well as the time limits applicable to the procedures, must be disclosed in the SPD. Prop. Reg. Section 2560.503-1(b)(2). Second, the proposal clarifies that notices of initial adverse determinations must include references to the plan provisions upon which the determinations were based. Prop. Reg. Section 2560.503-1(e)(1)(ii). Third, under the proposal, claimants receiving adverse benefit determinations must be provided with access to "pertinent documents," a term further defined in the proposed regulation. Prop. Reg. Sections 2560.503-1(f)(2)(i)(C) and (h)(3). (2) New Notice Requirements. The proposal requires plan administrators to notify participants and beneficiaries when requests for benefits fail to follow the plan's claim filing procedures. In such circumstances, participants or beneficiaries must be provided with a notice explaining that the request does not constitute a claim and describing the appropriate filing procedures within five days. Prop. Reg. Section 2560.503-1(b)(6). Similarly, the proposal imposes an obligation on plan administrators to inform claimants promptly of any claims that, while properly filed, are found to be incomplete. In such cases, the plan administrator

must inform the claimant of the information 1 Specifically, plans would be required to comply with the final regulation no later than the earlier of the first date on which the first summary of material modification (or updated SPD) is required to be furnished following the effective date of the final rule, or the first day of the second plan year beginning after the effective date of the final rule. - 2 - necessary to complete the claim. A plan that provides notice that a claim was incomplete would be required to provide claimants a period of not less than 180 days within which to supplement the claim and would be required to resolve the claim within 45 days of the earlier of the date on which the claimant supplied the requested information or the end of the 180-day period. Prop. Reg. Section 2560.503-1(d)(1), (2). (3) Clarification of Notice Delivery Requirements. The proposed regulation clarifies the appropriate manner in which a plan administrator may deliver required notifications to plan claimants and establishes a standard that would permit any means of delivery "reasonably calculated to ensure actual receipt," including electronic delivery. Such delivery, however, must satisfy standards that assure that the participant making a claim or appeal will know in advance that electronic media will be used for notification, that he or she will actually receive the notification, and that a paper copy of any electronically distributed notification will be provided upon request free of charge. (4) New Standards of Review on Appeal. The proposal requires that the review of an adverse benefit determination (1) be conducted by an appropriate named fiduciary who is neither the party who made the initial adverse determination, nor the subordinate of such party, (2) not afford deference to the initial determination, and (3) take into account all comments, documents, records, and other information submitted by the claimant, without regard to whether previously submitted for the initial determination process. Prop. Reg. Section 2560.503-1(f)(2)(i)(D), (E). This regulation is proposed to be effective 180 days after the date of the adoption of a final rule. Comments on the proposed rule may be addressed to the Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, Room N-5669, 200 Constitution Ave. NW, Washington, DC 20210. Attention: "Benefit Claims Regulation." All comments must be received on or before November 9, 1998. B. Summary Plan Descriptions An additional, proposed regulation would amend regulations governing the content of Summary Plan Descriptions. The Department's proposals are intended to update the SPD content requirements to reflect legislative and other changes that have occurred since the regulations were adopted in 1977. The proposed effective date of this proposal is 60 days after publication of a final rule.¹ The claims procedure regulation described above also would require certain disclosures be made in the SPD. The proposed regulatory changes that apply to retirement plans include the following: (1) Type of Pension Plan. Paragraph (d) of Reg. Section 2520.102-3 requires the SPD specify the type of pension plan. The proposed regulatory change would require the SPD to identify whether a defined contribution plan is intended to comply with ERISA Section 404(c). (The Department's section 404(c) regulations already require that participants be provided with an explanation that the plan is intended to constitute a Section 404(c) plan, but that explanation need not be in the SPD.) (2) QDRO Procedures. The proposed regulation would require that the SPD of a pension plan include either a description of the plan's procedures governing qualified domestic relations order (QDRO) - 3 - determinations or a statement indicating that a copy of such procedures may be obtained from the plan administrator without charge. (3) Clarification of Disclosures Regarding Plan Termination and Authority to Eliminate Benefits. SPDs would be required to include a summary of plan provisions governing (1) the authority of the plan sponsor or others to terminate the plan or eliminate, in whole or in part, benefits under the plan and the circumstances under which benefits under the plan may be amended or eliminated, (2) the benefits, rights and obligations of participants under the plan on termination of the plan or amendment or elimination of benefits under the plan, including a summary of any

provisions relating to the accrual or vesting of benefits under the plan upon termination, and (3) the allocation and disposition of assets of the plan upon termination. (4) PBGC Coverage. For defined benefit plans insured by the Pension Benefit Guaranty Corporation under ERISA Title IV, the proposed regulation would revise the model statement regarding PBGC insurance included in SPDs to more accurately reflect the benefits guaranteed under Title IV. (5) Statement of ERISA Rights. The proposed regulation also would make amendments to the statement of ERISA rights described in Reg. Section 2520.102-3(t), which is included in SPDs. Comments on this proposed regulation regarding the content of Summary Plan Descriptions should be submitted to the Office of Regulations and Interpretations, Room N-5669, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington D.C. 20210 on or before November 9, 1998. Russell G. Galer Senior Counsel Attachment

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