

MEMO# 12880

November 22, 2000

DOL FINAL REGULATIONS ON SUMMARY PLAN DESCRIPTIONS AND CLAIMS PROCEDURE

[12880] November 22, 2000 TO: PENSION MEMBERS No. 55-00 PENSION OPERATIONS ADVISORY COMMITTEE No. 86-00 RE: DOL FINAL REGULATIONS ON SUMMARY PLAN DESCRIPTIONS AND CLAIMS PROCEDURE On November 21, 2000, the Department of Labor published long-awaited revisions to claims procedure and summary plan description (SPD) regulations applicable to employee benefit plans. The final claims procedure regulations significantly modify in scope the proposed regulations. They apply principally to group health plans and plans providing disability benefits.¹ Standards for claims procedures applicable to retirement plans are substantially similar to those currently in effect and, therefore, retirement plans generally will not be required to revise their claims procedures.² Final rules issued regarding SPDs are applicable to all ERISA-covered plans, including retirement plans. Claims Procedure Regulations. Proposed claims procedure regulations published in September, 1998 included significant changes to claims procedure requirements for retirement plans.³ In December, 1998, the Institute questioned the need to revise the claims regulation procedures for retirement plans in a comment letter,⁴ and is pleased that the Department has determined not to make substantive revisions. The Department, however, in the preamble to the final regulations, has reserved for further consideration whether to reform claims procedure. 1 It is unclear to what extent a retirement plan with a disability benefit provision must comply with the claims procedure regulations applicable to disability benefits. The Department states in the preamble to the final regulations that "[w]here a single plan provides more than one type of benefit, it is the Department's intention that the nature of the benefit should determine which procedural standards apply to a specific claim, rather than the manner in which the plan itself is characterized." 65 Fed. Reg. 70247, n. 4. 2 The final regulations restate the claims procedure regulations as a whole, and, thus, are generally applicable to all employee benefit plans, including retirement plans. Although the intent was to retain rules for retirement plans substantially similar to those that are currently in effect, the language is not in all cases formulated in the same manner as in current regulations. 3 See Institute Memorandum to Pension Committee No. 65-98 and Pension Operations Advisory Committee No. 47- 98, dated September 24, 1998. 4 See Institute Memorandum to Pension Committee No. 85-98 and Pension Operations Advisory Committee No. 68- 98, dated December 10, 1998. 2regulations applicable to retirement plans. It is soliciting public comments to facilitate development of an adequate record upon which to consider such reforms. These final regulations apply to all claims filed on or after January 1, 2002. SPD Regulations. The final regulations update and clarify certain SPD content requirements applicable to retirement plans. These regulations are effective January 20, 2001, and are applicable as of

the first day of the second plan year beginning on or after January 22, 2001. First, the Department has updated the current rule requiring plan administrators to specify in the SPD the type of retirement plan by adding ERISA section 404(c) plans, defined contribution plans, 401(k) plans, and cash balance plans to the list of examples of types of retirement plans to be identified in the SPD. According to the regulation's preamble, this list of examples is not intended to be exhaustive, but rather, to indicate that the SPD must clearly communicate information to participants about the type of plan in which they participate and the features of the plan. For instance, where section 404(c) is intended to apply to only certain aspects of a plan or where participants have the right to direct only certain investments in their accounts, such information should be communicated in a clear and understandable manner. Second, the final regulations specifically require that the SPD address a number of items, including plan termination provisions and provisions under which a benefit amount may be reduced or offset. With respect to plan termination, the SPD must include a summary of any plan provisions governing the plan sponsor's authority to terminate the plan or eliminate benefits under the plan; a summary of any plan provisions governing the benefits, rights and obligations of participants under the plan on termination or upon the elimination of benefits, including a summary of provisions relating to the accrual and vesting of pension benefits under the plan upon termination; and a summary of plan provisions governing the allocation and disposition of plan assets upon termination. With respect to reductions or offsets in benefits, the final regulations require the disclosure in the SPD of subrogation, reimbursement and other provisions of a plan that may serve to eliminate, reduce or offset the amount of benefits to which a participant may be entitled. Similarly, the SPD must include a description of any fees or charges that may be imposed on participants or their individual accounts as a condition to receiving a benefit to the extent that the fee or charge directly or indirectly serves to reduce the benefit. We have attached the Department's press release and fact sheet summarizing the regulations in addition to a copy of the final regulations. Russell G. Galer Senior Counsel Attachments Note: Not all recipients receive the attachments. To obtain copies of the attachments to which this memo refers, please call the ICI Library at (202) 326-8304 and request the attachments for memo 12880. ICI Members may retrieve this memo and its attachments from ICINet (<http://members.ici.org>). Attachment no. 1 (in .pdf format) 3