

**MEMO# 14623**

April 10, 2002

# **DOL ISSUES FINAL REGULATIONS CONCERNING USE OF ELECTRONIC COMMUNICATION AND RECORDKEEPING TECHNOLOGIES**

[14623] April 10, 2002 TO: PENSION MEMBERS No. 14-02 PENSION OPERATIONS ADVISORY COMMITTEE No. 22-02 RE: DOL ISSUES FINAL REGULATIONS CONCERNING USE OF ELECTRONIC COMMUNICATION AND RECORDKEEPING TECHNOLOGIES The Department of Labor has issued the attached final regulations concerning the disclosure of certain employee benefit plan information through electronic media, and the maintenance and retention of employee benefit plan records in electronic form.<sup>1</sup> The disclosure regulation establishes a safe harbor pursuant to which all pension and welfare benefit plans covered under Title I of ERISA may use electronic media to satisfy their disclosure obligations. For example, the preamble to the final regulations mentions the following disclosures: (1) summary plan descriptions (SPDs), summaries of changes to SPDs, and summary annual reports; (2) individual benefit statements under section 105(c) of ERISA; (3) investment-related information required to be provided to participants and beneficiaries in section 404(c) plans; (4) qualified domestic relations order (QDRO) notifications under section 206(d)(3); (5) information concerning participant loans under section 408(b)(1); and (6) information required to be furnished or made available for inspection under sections 104(b)(2) and 104(b)(4). The safe harbor does not apply, however, to disclosures required under provisions of ERISA over which the Secretary of the Treasury has interpretative and regulatory authority pursuant to Reorganization Plan No. 4 of 1978. The new safe harbor rules apply to disclosures provided to two categories of individuals. First, the safe harbor applies to participants who have the ability to effectively access documents furnished in electronic form at any location where they are reasonably expected to perform their duties as employees, and with respect to whom access to the employer's or plan sponsor's electronic information system is an integral part of those duties. The second category of individuals includes participants, beneficiaries and other persons entitled to documents under Title I of ERISA (including, for example, alternate payees) who (1) have affirmatively consented, in electronic or non-electronic form, to receiving documents through electronic media and have not withdrawn such consent; (2) in the case of documents to be provided through the internet or other electronic communication network, have affirmatively consented or confirmed consent electronically, in a manner that reasonably demonstrates their ability to access information in the applicable electronic form, and have 1 67 Fed. Reg. 17264 (April 9, 2002). The regulations were proposed in 1999. 64 Fed. Reg. 4506 (January 28, 1999). 2 provided addresses for the receipt of electronically furnished documents; (3) prior to consenting, have been provided certain information, in electronic or non-electronic

form, in a clear and conspicuous statement; and (4) are provided a prescribed notice upon certain changes in hardware or software requirements for accessing or retaining documents. The preamble notes that the disclosure regulation does not categorize particular electronic media as either permissible or impermissible, as long as the conditions of the safe harbor are met. These conditions require that (1) the plan administrator take appropriate and necessary measures reasonably calculated to ensure that the system (a) results in actual receipt of the transmitted information, and (b) protects the confidentiality of personal information relating to the individual's accounts and benefits; (2) the document conforms to the applicable style, format and content requirements; (3) notice is provided to the individual, in electronic or non-electronic form, at the time the document is furnished electronically, of the significance of the document (when not otherwise reasonably evident as transmitted) and of the right to request and obtain a paper version of the document; and (4) the individual is furnished a paper version of the electronically furnished document upon request. The effective date of the disclosure regulation is October 9, 2002, and the effective date for the recordkeeping regulation is the first day of the first plan year beginning on or after October 9, 2002. Kathy D. Ireland Associate Counsel Attachment Note: Not all recipients receive the attachment. To obtain a copy of the attachment, please visit our members website (<http://members.ici.org>) and search for memo 14623, or call the ICI Library at (202) 326-8304 and request the attachment for memo 14623. Attachment (in .pdf format)