

MEMO# 12653

September 19, 2000

DOL ISSUES REQUEST FOR INFORMATION ON ERISA'S DISCLOSURE RULES; CONFERENCE CALL SCHEDULED FOR OCTOBER 10, 2000 AT 2:00 PM EST

[12653] September 19, 2000 TO: PENSION COMMITTEE No. 68-00 RE: DOL ISSUES REQUEST FOR INFORMATION ON ERISA'S DISCLOSURE RULES; CONFERENCE CALL SCHEDULED FOR OCTOBER 10, 2000 AT 2:00 PM EST The Department of Labor has issued a notice of request for information ("Notice") regarding disclosure obligations under ERISA. A conference call has been scheduled for Tuesday, October 10, 2000 at 2:00 p.m. EST to discuss the contents of the Notice and whether the Institute should submit a comment letter. Comments must be submitted by January 12, 2001. Specifically, the Department is soliciting comments regarding the effect on employee benefit plans and employers of recent rulings of the Supreme Court and federal circuit courts on the extent of an ERISA fiduciary's duty to disclose information to participants and beneficiaries.¹ The Department seeks to use the information submitted to determine whether it should clarify the extent of fiduciary duties under ERISA on disclosure and the interaction of such duties with the specific disclosure requirements of Title I of ERISA. The Department notes that it is considering a variety of possible actions, including the promulgation of regulatory guidance, more targeted intervention in litigation, enforcement actions, or legislative reform proposals. The Notice provides 18 questions, some of which are prefaced with "hypothetical fact patterns," that highlight the Department's areas of concern. In particular, the Department seeks comments on the following notable questions: • To what extent do the current reporting and disclosure requirements of Part 1 of Title I of ERISA fail to meet the needs of participants and beneficiaries with respect to understanding their benefits, their rights under ERISA, and the consequences of choices offered to them under their plans? • To what extent do the current administrative practices of plans fail to meet certain standards that have been articulated by one or more courts, including the extent of a 1 Throughout the Notice, the Department cites to numerous court decisions that address ERISA's disclosure requirements. Such cases include *Varity v. Howe*, 516 U.S. 489 (1996), and *Pegram v. Herdrich*, __U.S. __, 120 S. Ct. 2143 (2000). 2plan administrator's obligation to: (i) provide complete and accurate information when responding to requests for automatic disclosures; (ii) correct misleading statements contained in documents provided upon request when the statements which were once accurate have become misleading; (iii) provide complete and accurate information relevant to the participant or beneficiary's specific circumstances when benefits information is requested; (iv) provide complete and accurate information relevant to the participant or beneficiary when the participant or beneficiary inquires about future plan changes; and (v) disclose characteristics of the plan and of those who provide

services to the plan, if that information affects beneficiaries' material interests? • Should guidance issued by the Department on fiduciary disclosure obligations take into consideration State regulatory requirements or other federal regulatory requirements (e.g., securities laws, consumer protection laws, etc.), and if so, which requirements? • To what degree is the timing of disclosures about plan modifications related to the timing of routine communications with employees, such as furnishing employee newsletters, open-season informational packets, or individual account statements? If you would like to participate on the conference call scheduled for Tuesday, October 10, 2000 at 2:00 p.m. EST, please complete the response form below and send it to Brenda Turner by Friday, October 6, 2000. If you have any questions, comments or particular issues you would like to raise on the call, please call Russ Galer at (202) 326-5835 or myself at (202) 326- 5837. Thomas T. Kim Assistant Counsel Attachment Response Form for Institute Conference Call — DOL Notice on Disclosure under ERISA Tuesday, October 10, 2000 at 2:00 p.m. Please fax this form no later than Friday, October 6, 2000 to Brenda Turner, Investment Company Institute, at (202) 326-5839. Yes, I will participate in the conference call on Tuesday, October 10, 2000 at 2:00 p.m. EST. To participate in the call, dial (800) 949-5539 and ask for the Investment Company Institute call, confirmation number 4625228.

Committee Member/Alternate Company Phone Number Attachment (in .pdf format) 3

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