

**MEMO# 8779**

April 9, 1997

## **DEPARTMENT OF LABOR SEEKS COMMENT ON ELECTRONIC FILING OF SUMMARY PLAN DESCRIPTIONS**

April 9, 1997 TO: PENSION MEMBERS No. 16-97 PENSION OPERATIONS ADVISORY  
COMMITTEE No. 9-97 RE: DEPARTMENT OF LABOR SEEKS COMMENT ON ELECTRONIC FILING  
OF SUMMARY PLAN DESCRIPTIONS

On April 1, the Department of Labor released interim rules amending ERISA disclosure requirements for group health plans in response to directives under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). HIPAA required the Department to issue regulations providing "alternative mechanisms to delivery by mail" for certain group health plan notices. The interim rule thus permits the furnishing of summary plan descriptions (SPDs) for group health plans, as well as other health care related disclosures, through "electronic media." The Department is considering expanding the rule to other employee benefit plans and other types of disclosures, and is seeking comment thereon, as further explained below. The rule sets forth criteria to ensure that electronic communication results in the delivery of disclosure information that is "equivalent in both substance and form" to the information participants would have received if furnished in paper form. First, to assure receipt of such transmitted information, the regulation requires the plan administrator to take "appropriate and necessary measures" to assure receipt, e.g., use of a return-receipt feature or periodic reviews to confirm receipt. Second, participants must be apprised by either electronic or written notice of the significance of the documents to be furnished electronically. Third, participants must have the ability to effectively access at their worksite documents furnished in electronic form and the opportunity to readily convert the document to paper form free of charge. Fourth, upon request, the plan administrator must furnish, free of charge, a paper copy of any document delivered electronically. The Department has specifically requested comment on the "relative costs and benefits" associated with this fourth requirement. This interim rule does not apply to pension plan SPDs, but the Department states in the preamble to the regulation that it "believes the criteria set forth in the interim rule have applicability beyond group health plans." In the "absence of a public record on the matter," the Department has declined to extend the rule at this time. The Department seeks public comment on the criteria established, the extent to which the rule should be extended to other plans and other plan disclosures, and whether there is the need for additional criteria to ensure private, confidential communications.

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The Institute would like to support extension of this rule to pension plan disclosures. If you have any comments on the current regulatory criteria, please contact either the undersigned at (202) 326-5835 or Kathryn Ricard at (202) 326-5204 by May 9. Comments on these interim rules must be received by the DOL on or before May 31,

1997. Russell G. Galer Assistant Counsel - Pension Attachment (in .pdf format) Note: Not all recipients of this memo will receive an attachment. If you wish to obtain a copy of the attachment referred to in this memo, please call the Institute's Information Resource Center at (202)326-8304, and ask for this memo's attachment number: 8779.

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