The Asset Management Industry
SERVING INDIVIDUAL INVESTORS
INVESTMENT COMPANY INSTITUTE

COMMENT LETTER

March 26, 1999

Comment Letter on DOL Technology Proposals for Retirement Plans, March 1999

By Hand

March 26, 1999

Office of Regulations and Interpretations
Pension and Welfare Benefits Administration
U.S. Department of Labor
200 Constitution Avenue, N.W.
Room N-5669
Washington, DC 20210

Re: Proposed New Technology Rules

Ladies and Gentlemen:

On behalf of its investment company members, the Investment Company Institute (the "Institute")[1] submits the following comments in response to the notice of proposed rulemaking and request for information concerning the use of electronic communication and recordkeeping technologies by employee pension and welfare benefit plans.

Introduction

Institute members and their affiliates serve as directed trustees and service providers that provide nondiscretionary recordkeeping and other services, including filing and disclosure services, to retirement plans. They have extensive experience in applying new technologies to the administration of and recordkeeping for retirement plans and millions of non-retirement accounts. Using new technologies, investment companies have been able to provide their shareholders with timely, reliable information less expensively than is the case with a traditional "paper" system. In addition, shareholders with access to new technologies have the opportunity to implement their investment and other plan decisions promptly and accurately.

Based on the experience of the industry in this area, in 1997, we submitted comments in response to the Department’s request for information concerning whether its interim rules amending ERISA disclosure requirements for group health plans should be extended to

pension plans.2 We strongly supported the expansion of the rules to include electronic media disclosure for pension plans at that time and welcome the Department's current proposal to allow employers the option of delivering plan disclosures through electronic media.

In particular, we strongly support the approach of the proposed rules, which would provide the guidance necessary for the expanded use of new technologies and would allow the implementation of future technologies as they become available, without the need for repeated revision of the regulations. Therefore, we urge the prompt adoption of the final rules.

We do, however, recommend a change regarding the requirement that participants must be able to print documents from the electronic medium. We also support the expansion of these rules to cover other required disclosures and to apply to individuals, including beneficiaries and retirees, whose electronic access to documents is not at the worksite.

Specific Comment Concerning the Proposed Rules

Section 2520.104b-1(c)(2) of the proposed rules provides that the furnishing of documents through electronic media satisfies the disclosure requirements only with respect to participants "(i) [w]ho have the ability at their worksite to effectively access documents furnished in electronic form; and (ii) [w]ho have the opportunity at their worksite to readily convert furnished documents from electronic form to paper form free of charge." 64 Fed. Reg. 4512. The Institute submits that the second of these requirements is too restrictive and should be revised.

Specifically, we question the need to provide participants with the opportunity to readily convert documents from electronic form to paper form at their worksite when the proposed rule also would allow participants to request these documents in paper form from the plan administrator. See Section 2520.104b-1(c)(1)(iii). The Department recognized the potential redundancy of these two requirements in the preamble to the proposed rules and requested comment concerning the relative costs and benefits of these requirements.

The Institute recommends that the Department allow employers to choose either to allow participants to convert documents electronically or to allow participants to request documents in paper form. Employers may be reluctant to allow participants to use worksite printers for lengthy documents such as summary plan descriptions (SPDs) and, therefore, may prefer that the participant instead request a separate paper version of the SPD from the plan administrator. The availability of the paper version under this alternative should eliminate any need to print the document directly from the electronic source.3 On the other hand, the ability to convert the document to paper by printing the document directly should eliminate the need to make a paper version otherwise available.

Specific Comments Concerning Department's Request for Information

Additional Disclosures. In the preamble to the proposed rules, the Department invited comment as to whether the proposed standards should be expanded to additional types of plan disclosures. As we note above, Institute members have found that the use of technology results in the timely and effective delivery of information at a lower cost than traditional "paper" systems. Accordingly, we urge the Department to expand the scope of

the proposed rules to cover a broad range of disclosures. In the retirement plan context, we particularly recommend the use of technology to provide individual benefit statements.

Disclosures Beyond the Worksite. The Department also asked whether electronic media should be used for communications at places other than worksites. Specifically, the preamble mentioned those participants who are on paid leave or retired, and spouses or other beneficiaries who are not employed at the worksite, as potential recipients of electronic disclosures. The Institute supports allowing employers to offer those participants and beneficiaries who do not frequent the worksite the option of electing to receive required disclosures electronically at a designated site or electronic mail address. In most cases, the participant or beneficiary will receive the information in a more timely fashion than through the mail or other traditional means and at reduced cost to the plan. Furthermore, because this kind of communication would be an option that an employer could provide to these participants and beneficiaries, only those who are comfortable with and have ready access to the technology would choose the option. Therefore, the Department should specifically permit employers to offer "offsite" participants and beneficiaries the option of receiving plan disclosures electronically.

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The Institute appreciates the opportunity to provide comments concerning these proposed amendments. Please contact me at 202/326-5835 if we can provide further information or assistance.

Sincerely,

Russell G. Galer

cc: Robert J. Doyle
Katherine Lewis

ENDNOTES

1 The Investment Company Institute is the national association of the American investment company industry. Its membership includes 7,446 open-end investment companies ("mutual funds"), 456 closed-end investment companies, and 8 sponsors of unit investment trusts. Its mutual fund members have assets of about $5.662 trillion, accounting for approximately 95% of total industry assets, and have over 73 million individual shareholders.

2 62 Fed. Reg. 16979 (April 8, 1997).

3 The Institute notes that the Internal Revenue Service’s proposed amendments to Treasury regulations governing certain notices and consents include only a "paper form" requirement. We urge both regulators to develop consistent guidance.