

Comment Letter on Electronic Communication of Summary Plan Description, May 1997

Via Hand Delivery

May 14, 1997

Gerald B. Lindrew
Office of Policy and Research, U.S. Department of Labor
Pension and Welfare Benefits Administration
200 Constitution Avenue
Room N-5647
Washington, D.C. 20210

Re: Revised Collection of Summary Plan Description Requirements under ERISA

Dear Mr. Lindrew:

On behalf of its mutual company members, the Investment Company Institute¹ submits the following comments regarding the Department of Labor's Interim Rules Amending ERISA Disclosure Requirements for Group Health Plans published in the April 8, 1997 Federal Register. We strongly support the Department's interim rule permitting summary plan descriptions (SPDs) for group health plans, as well as other health care related disclosures, to be furnished through "electronic media."

In addition to providing mutual fund products to pension plans, Institute members often provide various administrative services to pension plans, including filing and disclosure services. Although the interim rule does not apply to pension plan SPDs, the Department indicated 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. However, 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.

The rule sets forth criteria to ensure that electronic communication results in the actual delivery of disclosure information to participants and that the information delivered is "equivalent in both substance and form" to the information participants would have received if furnished in a paper form. First, to assure actual receipt by the participants, the interim rule requires the plan administrator to take "appropriate and necessary" measures assuring receipt, e.g., use of return-receipt electronic mail feature or periodic reviews to confirm receipt. Second, the rule requires that the electronically delivered documents are prepared and furnished in a manner consistent with the style, format and content requirements of ERISA. Third, each participant must receive notice, through electronic means or in writing, of the significance of the document transmitted electronically (e.g., "this document describes benefits provided to you by your plan") and of the right to request and receive a paper copy of each document. Finally, the administrator must provide, upon request by any participant, a paper copy of any electronically delivered document free of charge.

The criteria included in the interim rule are reasonable and feasible. Because this rule applies only to participants with access to electronic media at their worksite and who have the opportunity, at their worksite, to readily convert electronic documents to paper documents free of charge, it does not create additional disclosure burdens for those plan sponsors without electronic media capability. Further, there is an increasing trend of worksite and individual access to electronic media. There is a corresponding trend among workers to use electronic communications and to receive information via electronic media. Therefore, the electronic transfer of SPDs and other documents is an appropriate method to provide an additional means of disclosure to participants with electronic media access.

The Institute supports efforts to extend the applicability of the interim rule to both other plans, i.e., pension plans, and other plan

disclosures, assuming the same criteria. Pension plan disclosures, like group health plan disclosures, are capable of being delivered through electronic media. Moreover, the benefits of electronic delivery, including cost savings and additional means of disclosure, should be made available to pension plans and participants. Therefore, the Institute believes that the interim rule allowing electronic media disclosure of SPDs for group health plans should be expanded to include electronic media disclosure for pension plans.

In addition, the Institute supports expanding the option of delivering plan disclosures through electronic media to other pension plan disclosures, including participant benefit statements and summary annual reports. For those plan sponsors with electronic communications capability and participants with electronic media access at their worksite, it follows that electronic communication should be included as an optional means of delivering required plan documents and disclosures.

As with all confidential communications, certain privacy issues are raised concerning the electronic dissemination of confidential information. Although all plan documents are considered to contain confidential information, certain documents, i.e., participant benefit statements, contain more sensitive private information. The Institute supports establishing additional criteria for the electronic delivery of individual account or benefit-related information. Such criteria could include, for example, additional passwords (participants receiving their benefit statements electronically must enter an additional password into the system in order to access the document), or requiring security policies for electronic media systems.

Overall, the Institute supports the efforts of the Department to facilitate electronic communication of group health plan SPDs to participants. The Institute strongly urges the Department to consider extending the rule to pension plan SPDs, as well as expanding the scope of the rule to other pension plan documents and disclosures. Electronic media delivery of plan disclosures does not in any way constrict current methods of disclosure for plan documents. On the contrary, it provides an additional means of disclosure to eligible plans and participants.

Sincerely,

Kathryn A. Ricard
Associate Counsel - Pension

cc: Mr. Eric A. Raps
Office of Regulations and Interpretations

ENDNOTE

¹ The Investment Company Institute is the national association of the American investment company industry. Its membership includes 6,368 open-end investment companies ("mutual funds"), 447 closed-end investment companies, and 10 sponsors of unit investment trusts. Its mutual fund members have assets of about \$3.611 trillion, accounting for approximately 95% of total industry assets, and have over 59 million individual shareholders.