

Request for Information—New Technologies in Retirement Plans

Announcement 98-62

The Internal Revenue Service and the Department of the Treasury request comments from the public relating to the use of new technologies (sometimes referred to as “paperless” technologies) in the administration of retirement plans. The Service and Treasury are in the process of developing guidance relating to the use of new technologies in communications between retirement plans and their participants. This announcement solicits comments on a number of specific issues. However, comments and suggestions from interested parties concerning other issues pertinent to these technologies are also requested.

BACKGROUND

Section 1510 of the Taxpayer Relief Act of 1997 (“TRA ’97”), Pub. L. 105-34, provides that the Secretary of the Treasury and the Secretary of Labor each shall issue guidance designed to interpret the notice, election, consent, disclosure, and time requirements (and related recordkeeping requirements) under the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 relating to retirement plans as applied to the use of new technologies by plan sponsors and administrators. Section 1510 requires the guidance to maintain the protection of the rights of participants and beneficiaries. Section 1510 further provides that the guidance shall clarify the extent to which writing requirements under the Internal Revenue Code of 1986 relating to retirement plans shall be interpreted to permit paperless transactions.

SPECIFIC ISSUES FOR COMMENT

The Service invites interested parties to submit information concerning the application of new or paperless technologies in the administration of retirement plans and concerning any issues that such technologies have presented for plan sponsors, ad-

ministrators, participants or beneficiaries. Specifically, interested members of the public are invited to describe new technologies that are commonly used in plan administration, and to indicate the extent to which these technologies, and the manner in which they are used, adequately protect the rights of participants and beneficiaries. Commentators also are invited to contrast characteristics and applications of technologies that adequately protect the rights of participants and beneficiaries with characteristics and applications that may not provide such protection. The Service is particularly interested in receiving specific comments regarding the paperless administration of participant elections and consents, plan notices, plan loans, and distributions.

In addition to the information requested above, comments are specifically invited on the following questions:

- Would it be preferable for guidance to focus on specific uses of existing technologies or to take the form of generally applicable principles or standards? If commentators recommend that guidance take the form of generally applicable principles or standards, it is requested that the comments identify suggested principles or standards as specifically as possible (including any variations appropriate for different technologies).

- To what extent, if any, do the terms “election” and “consent” imply a writing or signature requirement?

- To what extent should paperless identification mechanisms (for example, a Personal Identification Number (“PIN”) or password) be treated as satisfying a legal requirement of a “writing” or a signature?

- Should the requirement to provide a notice during a specified period (such as the requirement to provide a § 402(f) notice no less than 30 and no more than 90 days before the date of an eligible rollover distribution) be deemed to be satisfied by providing a written copy of a full notice on a less frequent basis (for example, once a year) if participants or beneficiaries, when initiating a transaction to which the notice relates (such as requesting a distribution), are given an oral or recorded summary of the notice and told how to obtain a copy of the full notice?

• What are the appropriate standards for authentication, substantiation, and security in paperless plan administration and record-keeping? For example, how can it be established with a reasonable level of confidence that a plan notice has actually been received by a plan participant or beneficiary to whom the notice has been transmitted in a paperless form? Similarly, how can it be established that a particular paperless transaction was entered into by a particular participant? Also, how should records of paperless transactions be maintained by plan sponsors or administrators?

• What are the appropriate standards for ensuring that participants and beneficiaries have sufficient time and opportunity to consider (and, if desired, obtain advice on) all relevant options when making significant decisions about retirement savings? For example, should participants and beneficiaries have the right to review and change the content of any communication or instructions transmitted in a paperless form before completion of the transaction, and should they always have the right to receive communications on paper as an alternative to paperless communications?

• What types of new or paperless technologies do plan sponsors and administrators foresee using in the future? What practical and legal issues might arise from the use of those technologies, and how might systems using those technologies be designed to protect the rights of participants and beneficiaries?

• Which issues raised by the use of new technologies in retirement plans are most in need of administrative guidance?

Comments received to date indicate that the possible use of electronic technologies in the administration of the spousal consent requirements of §§ 401(a)(11) and 417 of the Code raises a number of significant legal and practical issues relating to adequate protection of persons who are not plan participants or current or former employees. Consequently, initial guidance on new technologies is unlikely to address issues involving spousal consent. The public is nevertheless invited to submit comments on this topic.

ADDRESS

Written comments should be submitted

with a signed original and eight (8) copies. All comments will be available for public inspection and copying in their entirety. Comments should be sent to CC:DOM:CORP:R (OGI-106555-98), Room 5226, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Alternative comments may be hand delivered between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:R, Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC, or may be submitted electronically via the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. To ensure that comments are given full consideration, they should be submitted by October 5, 1998.

DRAFTING INFORMATION

The principal authors of this announcement are Catherine Livingston Fernandez of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations) and Daniel S. Evans of the Employee Plans Division. For further information regarding this announcement, contact the Employee Plans Division telephone assistance service between 1:30 and 4:00 p.m., Eastern Time, Monday through Thursday at (202) 622-6074/75, or Ms. Fernandez at (202) 622-6030. (These telephone numbers are not toll-free).