

Notice of Proposed Rulemaking and Notice of Public Hearing

New Technologies in Retirement Plans

REG-118662-98

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed amendments to the regulations governing certain notices and consent required in connection with distributions from retirement plans. Specifically, these proposed regulations set forth applicable standards for the transmission of those notices and consent through electronic media and modify the timing requirements for providing certain distribution-related notices. The proposed regulations provide guidance to plan sponsors and administrators by interpreting the notice and consent requirements in the context of the electronic administration of retirement plans. The proposed regulations affect retirement plan sponsors, administrators, and participants. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by March 18, 1999. Outlines of topics to be discussed at the public hearing scheduled for April 15, 1999, at 10 a.m. must be received by March 25, 1999. **ADDRESSES:** Send submissions to: CC:DOM:CORP:R (REG-118662-98), Room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG-118662-98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. The

public hearing will be held in room 2615, Internal Revenue Service Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Catherine Livingston Fernandez (202) 622-6030; concerning submissions of comments and the hearing, and/or to be placed on the building access list to attend the hearing Michael L. Slaughter (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224. Comments on the collection of information should be received by February 16, 1999. Comments are specifically requested concerning:

Whether the proposed collections of information are necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility; The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collections of information in this proposed regulation are in 26 CFR §§1.402(f)-1, 1.411(a)-11, and 35.3405-1. This information is required for notices to recipients of distributions from retirement plans, individual retirement accounts, and annuities. This information will be used to help recipients make informed decisions regarding these distributions. The collections of information are mandatory. The likely respondents are individuals, business or other for-profit institutions, and nonprofit institutions.

Estimated total annual reporting and/or recordkeeping burden: 477,563 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: 76 minutes.

Estimated number of respondents and/or recordkeepers: 375,000.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Section 411(a)(11) of the Internal Revenue Code generally provides that if the value of a participant's accrued benefit exceeds \$5,000, the benefit may not be immediately distributed without the participant's consent. Section 1.411(a)-11(c) of the Income Tax Regulations states that this requirement applies until the later of normal retirement age or age 62 and requires that the consent be in writing. Section 1.411(a)-11(c)(2) of the regulations provides that the participant's consent is not valid unless, prior to the distribution, the participant is given an explanation of the plan distribution options (e.g., lump sum, annual installments, annuity, etc.) and is advised of the right to defer the distribution in a manner that would satisfy the notice requirement of section 417(a)(3).

Section 402(f) requires that the plan administrator of a qualified retirement plan provide the recipient of an eligible rollover distribution with a written explanation of the direct rollover, mandatory 20-percent income tax withholding, and other relevant tax information. Section 1.402(f)-1 Q&A-2 requires that notices under section 402(f) be provided no less than 30 and no more than 90 days before the date of a distribution, although a participant may waive the 30-day period.

Section 3405(e)(10)(B) of the Code requires the payor of any designated distribution (other than an eligible rollover distribution) to transmit to the payee a notice of the right not to have income tax withheld from the payment.

Section 1510 of the Taxpayer Relief Act of 1997 provides for the Secretary of the Treasury to issue guidance designed to interpret the notice, election, consent, disclosure, time, and related recordkeeping requirements under the Code and the Employee Retirement Income Security Act of 1974 (ERISA) regarding the use of new technologies by sponsors and administrators of retirement plans and to clarify the extent to which writing requirements under the Code relating to retirement plans permit “paperless” transactions. Section 1510 provides that the guidance must protect participant and beneficiary rights. Any final regulations applicable to this guidance may not be effective until the first plan year beginning at least six months after issuance as final regulations.

The IRS and Treasury issued Announcement 98-62, 1998-29 I.R.B.13, to request comments from interested members of the public concerning the development of the guidance described in section 1510. Announcement 98-62 solicited information on the kinds of electronic or “paperless” technologies used by sponsors and administrators in plan administration, identified a number of specific legal and practical issues for comment, and requested that commentators identify the issues most in need of administrative guidance. Commentators generally encouraged the IRS and Treasury to issue guidance facilitating the use of new technologies in plan administration, particularly the use of electronic technologies for transmission of the notices and consent required for plan distributions. These proposed regulations respond to the com-

ments by providing the guidance most frequently requested by commentators.

Additionally, in response to many of the comments submitted under Announcement 98-62, the IRS and Treasury are issuing a notice concerning the use of electronic media for general plan transactions. The notice confirms that the “paperless” administration of participant enrollments, contribution elections, investment elections, beneficiary designations (other than designations requiring spousal consent), direct rollover elections, and certain other transactions will not cause a qualified plan to fail to satisfy the requirements of section 401(a) (or the requirements for a qualified cash or deferred arrangement under section 401(k)). The notice is intended to apply to a broad range of general plan transactions and electronic media, but it does not apply to transactions for which the Code, the regulations, or other guidance of general applicability prescribes requirements for the media through which such transactions may be conducted (for example, it does not apply to providing the section 402(f) notice). Additionally, the notice does not address the application of Title I of ERISA to the use of electronic media for any plan transactions.

Explanation of Provisions

General

These proposed regulations permit the use of electronic media for the transmission of certain notices and consent required for distributions from qualified plans. Using flexible standards — rather than detailed requirements — the proposed regulations:

- Permit electronic delivery of the notice of distribution options and the right to defer under section 411(a)(11), the rollover notice under section 402(f), and the voluntary tax withholding notice under section 3405(e)(10)(B);
- Permit participant consent to a distribution under section 411(a)(11) to be given electronically; and
- Permit a plan to provide the section 411(a)(11) and section 402(f) notices more than 90 days before a distribution, if the plan provides a summary of the notices within 90 days before the distribution.

Notices under sections 402(f), 411(a)(11), and 3405(e)(10)(B)

1. *Use of electronic media for delivery of notices*

The proposed regulations provide that, in general, a plan may provide a notice required under section 402(f), 411(a)(11), or 3405(e)(10)(B) either on a written paper document or through an electronic medium reasonably accessible to the participant to whom the notice is given. The proposed regulations generally do not categorize particular electronic media as either permissible or impermissible for this purpose and do not prescribe detailed, media-specific rules. Instead, the proposed regulations set forth generally applicable standards that are intended to parallel the key attributes of notices provided on written paper documents without imposing more stringent requirements on electronic notices. The use of generally applicable standards rather than detailed rules is consistent with the comments received under Announcement 98-62.

Under the proposed regulations, an electronic notice must be provided under a system reasonably designed to give the notice in a manner no less understandable to the participant than a written paper document. The no-less-understandable requirement is to be applied taking into account the method of delivery and the format and content of the electronic notice; however, the standard is not intended to require that the electronic notice be identical in form or content to a corresponding notice provided on a written paper document (although an electronic notice must contain all the information that would be required if the notice were provided on a written paper document).

The IRS and Treasury would expect that provision of notices through e-mail or a plan web site would in most cases satisfy the no-less-understandable requirement under well designed systems. However, the IRS and Treasury expect that the amount and nature of the information that must be provided in the section 402(f) notice would preclude oral delivery of the full section 402(f) notice through a telephone system. By contrast, the amount and nature of the information required in the notice under section 3405(e)(10)(B) is such that the no-less-understandable stan-

dard may be met by a notice provided through a telephone system.¹ Whether a section 411(a)(11) notice may be provided through a telephone system will depend on the complexity of the plan distribution options. A plan with a few simple distribution options could provide, through a well designed telephone system, a section 411(a)(11) notice that is just as understandable as a notice provided on a written paper document; a plan with more numerous or more complex distribution options may not be able to satisfy the no-less-understandable standard in that manner.

The IRS and Treasury believe that participants should be able to receive a written paper notice from the plan on request and that the right to receive a written paper notice is an important safeguard for participants. Many of the comments submitted under Announcement 98-62 strongly supported this proposition. Certain participants may be unable to use paperless technologies in an effective manner, particularly as these new technologies emerge and change rapidly. In such cases, the right to receive a notice on a written paper document may be necessary to ensure that the participant has an adequate opportunity to deliberate about his or her rights and options (and to seek advice from third parties, if desired). In accordance with these considerations, the proposed regulations provide that a participant who is given a legally required notice through an electronic medium be advised at the time the notice is given that he or she may request and receive the notice on a written paper document at no charge.

Because of its potential significance to individuals, this written paper notice must be a copy that participants can retain for their own records (thus, a posted copy is not adequate). Merely making paper notices available through the electronic medium used to deliver the notice or another electronic medium (for example, by including a “print” option on an e-mail system or a web site) is not adequate because of the uncertainty in determining

whether a participant will in fact be able to generate the paper version of the notice. A written paper notice furnished on request need not contain precisely the same information or be presented in the same format as the notice delivered through an electronic medium. Rather, the written paper notice (like the electronic notice) need only satisfy the applicable legal requirements regarding that notice.

These generally applicable standards for electronic notices are illustrated by several examples. The examples illustrate whether certain uses of electronic technologies satisfy the proposed regulations, but they are not intended to constitute an exhaustive list of permissible uses, systems, or media. Other uses, systems, or media (whether extant, such as CD-ROM or touch-screen kiosk, or not yet developed) that satisfy the applicable standards would be permitted.

To conform the rules for providing the section 411(a)(11) notice to the standards described above, the proposed regulations remove from the existing regulations the requirement that the section 411(a)(11) notice be received “in a manner that would satisfy the notice requirements of section 417(a)(3).” Also, while they do not remove references in the existing regulations to the “written” section 402(f) notice (because the statutory provisions of section 402(f) specifically refer to a “written” notice), the proposed regulations provide for the electronic transmission of the section 402(f) notice and modify the timing requirement for providing that notice.

2. Flexibility for timing requirement in providing notices

The proposed regulations modify the timing requirement for providing the section 402(f) and section 411(a)(11) notices. Under existing regulations, those notices must be provided no less than 30 days and no more than 90 days before the date of a distribution, although a participant is permitted to waive the 30-day period.² As discussed above, the proposed regulations permit plans with comparatively few and

simple distribution options to provide the section 411(a)(11) notice through a variety of electronic media, including (in many cases) automated telephone systems. This will make it easier for those plans to provide the notice within the 90/30-day period (for example, by providing the notice when a participant requests a distribution through the automated telephone system). Similarly, plans with more numerous or more complex distribution options that use an e-mail system or a web site may provide the notice when a participant requests a distribution through the e-mail system or the web site.

The proposed regulations also provide flexibility with respect to the 90-day period by providing an alternative timing rule under sections 402(f) and 411(a)(11). Under this alternative timing rule, a plan may give the full section 402(f) and section 411(a)(11) notices more than 90 days before the distribution and provide the participant a summary of the notice during the 90/30-day period. The full notice is not required to be provided on a regular periodic basis and could be provided in connection with other materials (for example, in the summary plan description or in a brochure describing plan distribution features), but it must be updated (and provided to the participant) as necessary to ensure accuracy as of the time the summary is provided.

The summary of the notice must set forth the material provisions of the notice, must refer the participant to the most recent occasion on which the full notice was provided (and, in the case of a notice provided in a document — such as the summary plan description — that contains other information, must identify that document and must indicate where the notice may be found in that document), and must advise the participant of the right to request and receive a full notice without charge. The plan could make this full notice available through an electronic medium under a system that satisfies the standards discussed above if it also offers the participant the option to request the full notice on a written paper document. Whether written or electronic, the full notice, if requested, must be provided without charge no fewer than 30 days prior to the date of the distribution (although the

¹ The permissibility under the proposed regulations of providing the section 3405 notice through an electronic medium is not limited to qualified plans described in section 401(a); rather, it applies with respect to any payor under section 3405.

² The timing requirements and waiver provisions for purposes of the section 411(a)(11) notice are provided in Treasury Regulations §§1.411(a)-11(c)-(2)(ii) and (iii), which are part of final regulations published in T.D. 8796, 1999-4 I.R.B. 16.

participant may waive this 30-day period).

In the case of the section 411(a)(11) notice, the summary will consist of a statement that the participant has a right to defer receipt of the distribution (if applicable) and a summary of the plan distribution options. In the case of the section 402(f) notice, the summary must summarize the principal provisions of the section 402(f) notice. The use of electronic media to provide these summaries is subject to the same generally applicable standards that apply to the electronic transmission of the full section 411(a)(11) and section 402(f) notices, as described above. In contrast to the full section 402(f) notice, however, the IRS and Treasury believe that the summary of the section 402(f) notice can be provided orally through a well designed telephone system in a manner no less understandable than a written paper summary. The following summary, based on the summary set forth in Notice 92-48, 1992-2 C.B. 377, is an example of a section 402(f) summary that may be provided through an automated telephone system:

Summary of Notice Regarding Important Tax Information

The following is a brief explanation of an important decision you must make about any distribution you request from the Plan. Please listen to it carefully. You can find a more complete written explanation of these rules in the Summary Plan Description for the Plan, beginning on page x. You can obtain a free copy of the complete explanation from the Personnel Office, or you will have an opportunity at the end of this message to request to have a copy mailed to you.

A payment from the Plan may be eligible for "rollover" treatment. A payment that is eligible for "rollover" can be taken in two ways. You can have ALL OR ANY PORTION of your payment either (1) PAID IN A "DIRECT ROLLOVER" or (2) PAID TO YOU.

A rollover is a payment of your Plan benefits to your individual retirement arrangement (IRA) or to another employer plan. This choice will affect the tax you owe.

If you choose a DIRECT ROLLOVER

1. Your payment will not be taxed in the current year and no income tax will be withheld.
2. Your payment will be made directly to your IRA or, if you choose, to another employer plan that accepts your rollover.
3. Your payment will be taxed later when you take it out of the IRA or the employer plan.

If you choose to have your Plan benefits PAID TO YOU

1. You will receive only 80% of the payment, because the plan administrator is required to withhold 20% of the payment and send it to the IRS as income tax withholding to be credited against your taxes.
2. Your payment will be taxed in the current year unless you roll it over. You may be able to use special tax rules that could reduce the tax you owe. However, if you receive the payment before age 59-1/2, you also may have to pay an additional 10% tax.
3. You can roll over the payment by paying it to your IRA or to another employer plan that accepts your rollover within 60 days of receiving the payment. The amount rolled over will not be taxed until you take it out of the IRA or employer plan.
4. If you choose to have your Plan benefits paid to you and you want to roll over 100% of the payment to an IRA or an employer plan, YOU MUST FIND OTHER MONEY TO REPLACE THE 20% THAT WAS WITHHELD. If you roll over only the 80% that you received, you will be taxed on the 20% that was withheld and that is not rolled over.

You can find a complete explanation of these rules, as well as additional rules that may apply in special circumstances, beginning on page x of your Summary Plan Description. You can also obtain a free copy of the complete explanation from the Personnel Office.

If you wish to have a free copy of the complete explanation mailed to you, press 1.

If you wish to hear this explanation again, press 2.

If you wish to end this transaction now, without requesting any distribution, press 3.

If you wish to continue with this transaction, press 4.

Consent under section 411(a)(11)

The proposed regulations provide that, in general, a plan may receive a participant's consent either on a written paper document or through an electronic medium reasonably accessible to the participant. As in the case of participant notices, the proposed regulations generally do not categorize particular electronic media as either permissible or impermissible for this purpose and do not prescribe detailed, media-specific rules. Instead, the proposed regulations set forth generally applicable standards for transmitting consent through electronic media. The standards are intended to parallel the key attributes of participant consent provided on written paper documents without imposing more stringent requirements on electronic consents. To conform the existing regulations to this change, the proposed regulations remove the requirement that a participant's consent be "written."

The proposed regulations provide that participant consent transmitted through an electronic medium must be given under a system that is reasonably designed to preclude an individual other than the participant from giving the consent and that provides the participant a reasonable opportunity to review and to confirm, modify, or rescind the terms of the distribution before the consent to the distribution becomes effective. The proposed regulations do not set out specific rules regarding adequate identification or authentication of participants; the IRS and Treasury note, however, that many comments submitted under Announcement 98-62 confirmed that "paperless" systems ordinarily use passwords and personal identification numbers to ensure participant identity in plan transactions.

The requirement that a participant be given a reasonable opportunity to review and to confirm, modify, or rescind the terms of a distribution before his or her consent becomes effective is not intended to require a mandatory rescission period after a transaction has been completed; it is sufficient for the plan to provide this opportunity immediately before the participant completes the session in which the consent is given (for example, before exiting the plan web site or at the end of an automated telephone transaction). The opportunity to review and to confirm, modify, or rescind the terms of the distribution may be compared to a participant's opportunity to review the terms of a distribution on a written paper distribution election form prior to submitting that written paper form to the plan.

Many comments submitted under Announcement 98-62 indicated that it is a very common practice in electronic plan administration to provide participants with confirmations (usually written confirmations) of plan transactions. The receipt of a confirmation is, for the participant, analogous to the opportunity to retain a photocopy of a written paper distribution election form. Consistent with these comments, the proposed regulations provide for the plan to give the participant a confirmation of the terms of the distribution within a reasonable time after the participant has given consent through an electronic medium. However, the confirmation of the participant's consent to the distribution generally need not

be given through a written paper document; it may be given through any electronic medium that would satisfy the provisions of the proposed regulations for delivery of the section 411(a)(11) notice. (Thus, if the confirmation is given through an electronic medium, the participant must be given the right to request and to receive the confirmation on a written paper document.) Additionally, the confirmation need not be given as a separate transaction. For example, the confirmation could be given immediately before completion of a session conducted on a plan web site. Alternatively, a plan could provide the confirmation by reflecting the transaction in a participant's periodic account statement (provided that the confirmation is given within a reasonable time after the consent).³

As with notices, the general standards for the section 411(a)(11) consent are illustrated by several examples intended to describe in broad terms certain uses of electronic technologies that would satisfy the proposed regulations. The examples illustrate consent given through e-mail, web sites (Internet or intranet), and automated telephone systems and clarify that a participant may consent to a distribution orally through an automated telephone system. The examples are not intended to constitute an exhaustive list of permissible uses, systems, or electronic media or to imply that other uses, systems, or electronic media (whether extant or not yet developed) would fail to satisfy the proposed regulations.

Other transactions and recordkeeping

A few comments submitted under Announcement 98-62 requested guidance on the use of electronic media for waivers of the qualified joint and survivor annuity and the qualified preretirement survivor annuity, spousal consent, and related explanations under section 417. Guidance

³ Several commentators requested that guidance on electronic plan administration clarify that participants need not receive written paper confirmation of every plan transaction conducted through an electronic medium (such as an inquiry regarding a participant's account value). The IRS and Treasury note that (apart from the provision of the proposed regulations described above) neither the Code nor the regulations impose a requirement to provide confirmation (written or otherwise) of plan transactions conducted through an electronic medium.

on those issues has not been issued at this time because any use of electronic media for those purposes — as well as for the notice requirements of sections 401(k)(12) and 401(m)(11) (pertaining to the safe harbor methods of satisfying the nondiscrimination requirements of sections 401(k) and (m)) and the notice requirements of section 204(h) of ERISA — would raise substantial issues distinct from those raised by the use of electronic media for the notice and consent requirements of sections 402(f), 411(a)(11), and 3405(e)-(10)(B). The IRS and Treasury will be reviewing those issues and will consider whether guidance should be issued in the future.

Several comments also requested guidance regarding the use of electronic media for withholding elections under section 3405. The IRS and Treasury are issuing guidance permitting payors to establish systems to receive Form W-4P (Withholding Certificate for Pension or Annuity Payments) electronically. Interested parties are invited to submit comments concerning what, if any, additional guidance is needed concerning the use of electronic media for withholding elections under section 3405.

Several comments submitted under Announcement 98-62 addressed recordkeeping under section 6001 for electronic plan administration. Revenue Procedure 98-25, 1998-11 I.R.B. 7, specifies the basic requirements that the IRS considers to be essential in cases where a taxpayer's records are maintained within an Automatic Data Processing system. Under section 3.01 of Revenue Procedure 98-25, these requirements apply to employee plans. Additionally, Revenue Procedure 97-22, 1997-1 C.B. 652, provides guidance to taxpayers maintaining books and records by using an electronic storage system that either images their hardcopy (paper) books and records, or transfers their computerized books and records, to an electronic storage medium, such as an optical disk. Under section 3.02 of Revenue Procedure 97-22, the requirements of that revenue procedure apply employee plans. The IRS and Treasury invite interested parties to submit comments on what specific guidance is needed concerning recordkeeping requirements for electronic plan administration in addition to that provided in Revenue Procedures 98-25 and 97-22.

Reliance

Plan sponsors and administrators may rely on these proposed regulations for guidance pending the issuance of final regulations. If, and to the extent, future guidance is more restrictive than the guidance in these proposed regulations, the future guidance will be applied without retroactive effect.

Proposed Effective Date

These regulations are proposed to be effective the first day of the first plan year beginning on or after the date that is six months after they are published in the **Federal Register** as final regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the regulations provide paperless alternatives to notices that otherwise must be sent as written paper documents. It is anticipated that most small businesses affected by these regulations will be sponsors of retirement plans. Since these notices are provided only upon distributions and since, in the case of a small plan, there will be relatively few distributions per year, small plans that implement a paperless system for delivering these notices will likely contract for them as part of a paperless system for distributions offered by outside vendors. The paperless delivery of the notices will only add a minor increment to the cost of these paperless distribution systems or the plan sponsor will continue to use a paper-based system. Accordingly, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, considera-

tion will be given to any electronic and written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed regulations and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for April 15, 1999, at 10 a.m. in room 2615, Internal Revenue Service Building, 1111 Constitution Avenue, NW, Washington, DC. Due to security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present a photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments and an outline of topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by March 25, 1999.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Catherine Livingston Fernandez, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. However, personnel from other offices of the IRS and Treasury Department participated in their development.

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Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 35 are proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.402(f)-1 is amended by:

1. Revising Q&A-2.
2. Adding Q&A-5 and Q&A-6.

The revision and additions read as follows:

§1.402(f)-1 Required explanation of eligible rollover distributions; questions and answers.

* * * * *

Q-2: When must the plan administrator provide the section 402(f) notice to a distributee?

A-2: The plan administrator must provide the section 402(f) notice to a distributee at a time that satisfies either paragraph (a) or (b) of this Q&A-2.

(a) Paragraph (a) of this Q&A-2 is satisfied if the plan administrator provides a distributee with the section 402(f) notice no less than 30 days and no more than 90 days before the date of a distribution. However, if the distributee, after having received the section 402(f) notice, affirmatively elects a distribution, a plan will not fail to satisfy section 402(f) merely because the distribution is made less than 30 days after the section 402(f) notice was provided to the distributee, provided the plan administrator clearly indicates to the distributee that the distributee has a right to consider the decision of whether or not to elect a direct rollover for at least 30 days after the notice is provided. The plan administrator may use any method to inform the distributee of the relevant time period, provided that the method is reasonably designed to attract the attention of the distributee. For example, this information could be either provided in the section 402(f) notice or stated in a separate document (e.g., attached to the election form) that is provided at the same time as the notice. For purposes of satisfying the requirement in the first sentence of paragraph (a) of this Q&A-2, the plan administrator may substitute the annuity starting date, within the meaning of §1.401(a)-20, Q&A-10, for the date of the distribution.

(b) This paragraph (b) is satisfied if the plan administrator—

(1) Provides a distributee with the section 402(f) notice;

(2) Provides the distributee with a summary of the section 402(f) notice within the time period described in paragraph (a) of this Q&A-2; and

(3) If the distributee so requests after receiving the summary described in paragraph (b)(2) of this Q&A-2, provides the section 402(f) notice to the distributee without charge and within the period specified in paragraph (a) of this Q&A-2 (disregarding the 90-day period described in paragraph (a) of this Q&A-2). The summary described in paragraph (b)(2) of this Q&A-2 must set forth a summary of the principal provisions of the section 402(f) notice, must refer the distributee to the most recent occasion on which the section 402(f) notice was provided (and, in the case of a notice provided in any document containing information in addition to the notice, must identify that document and must indicate where the notice may be found in that document), and must advise the distributee that, upon request, a copy of the section 402(f) notice will be provided without charge.

* * * * *

Q-5: Will the requirements of section 402(f) be satisfied if a plan administrator provides a distributee with the section 402(f) notice or the summary of the notice described in paragraph (b)(2) of Q&A-2 of this section other than through a written paper document?

A-5: A plan administrator may provide a distributee with the section 402(f) notice or the summary of that notice described in paragraph (b)(2) of Q&A-2 of this section either on a written paper document or through an electronic medium reasonably accessible to the distributee. A notice or summary provided through an electronic medium must be provided under a system that satisfies the following requirements:

(a) The system must be reasonably designed to provide the notice or summary in a manner no less understandable to the distributee than a written paper document.

(b) At the time the notice or summary is provided, the distributee must be advised that the distributee may request and receive the notice on a written paper document, and, upon request, that document

must be provided to the distributee at no charge.

Q-6: Are there examples that illustrate the provisions of Q&A-2 and Q&A-5 of this section?

A-6: The following examples illustrate the provisions of Q&A-2 and Q&A-5 of this section:

Example 1. A qualified plan (Plan A) permits participants to request distributions by e-mail. Under Plan A's system for such transactions, a participant must enter his or her account number and personal identification number (PIN); this information must match that in Plan A's records in order for the transaction to proceed. If a participant changes his or her PIN, the participant may not proceed with a transaction until Plan A has sent confirmation of the change to the participant. If a participant requests a distribution from Plan A by e-mail and the distribution is an eligible rollover distribution, the plan administrator provides the participant with a section 402(f) notice by e-mail. The plan administrator also advises the participant that he or she may request the section 402(f) notice on a written paper document and that, if the participant so requests, the written paper document will be provided at no charge. To proceed with the distribution by e-mail, the participant must acknowledge receipt, review, and comprehension of the section 402(f) notice. Plan A does not fail to satisfy the notice requirement of section 402(f) merely because the notice is provided to the participant other than through a written paper document.

Example 2. A qualified plan (Plan B) permits participants to request distributions through the Plan B web site (Internet or intranet). Under Plan B's system for such transactions, a participant must enter his or her account number and personal identification number (PIN); this information must match that in Plan B's records in order for the transaction to proceed. If a participant changes his or her PIN, the participant may not proceed with a transaction until Plan B has sent confirmation of the change to the participant. A participant may request a distribution from Plan B by following the applicable instructions on the Plan B web site. After the participant has requested a distribution that is an eligible rollover distribution, the participant is automatically shown a page on the web site containing a section 402(f) notice. Although this page of the web site may be printed, the page also advises the participant that he or she may request the section 402(f) notice on a written paper document and that, if the participant so requests, the written paper document will be provided at no charge. To proceed with the distribution through the web site, the participant must acknowledge review and comprehension of the section 402(f) notice. Plan B does not fail to satisfy the notice requirement of section 402(f) merely because the notice is provided to the participant other than through a written paper document.

Example 3. A qualified plan (Plan C) permits participants to request distributions through Plan C's automated telephone system. Under Plan C's system for such transactions, a participant must enter his or her account number and personal identification number (PIN); this information must match that

in Plan C's records in order for the transaction to proceed. If a participant changes his or her PIN, the participant may not proceed with a transaction until Plan C has sent confirmation of the change to the participant. Plan C provides the section 402(f) notice in the summary plan description, the most recent version of which was distributed to participants in 1997. A participant may request a distribution from Plan C by following the applicable instructions on the automated telephone system. In 1999, a participant, using Plan C's automated telephone system, requests a distribution that is an eligible rollover distribution. The automated telephone system refers the participant to the most recent occasion on which the section 402(f) notice was provided in the summary plan description, informs the participant where the section 402(f) notice may be located in the summary plan description, and provides an oral summary of the material provisions of the section 402(f) notice. The system also advises the participant that the participant may request the section 402(f) notice on a written paper document and that, if the participant so requests, the written paper document will be provided at no charge. Before proceeding with the distribution, the participant must acknowledge comprehension of the summary. Under Plan C's system for processing such transactions, the participant's distribution will be made no more than 90 days and no fewer than 30 days after the participant requests the distribution and receives the summary of the section 402(f) notice (unless the participant waives the 30-day period). Plan C does not fail to satisfy the notice requirement of section 402(f) merely because Plan C provides a summary of the section 402(f) notice or merely because the summary is provided to the participant other than through a written paper document.

Example 4. The facts are the same as in *Example 3*, except that, pursuant to Plan C's system for processing such transactions, a participant who so requests is transferred to a customer service representative whose conversation with the participant is recorded. The customer service representative provides the summary of the section 402(f) notice by reading from a prepared text. Plan C does not fail to satisfy the notice requirement of section 402(f) merely because Plan C provides a summary of the section 402(f) notice or merely because the summary of the section 402(f) notice is provided to the participant other than through a written paper document.

Example 5. The facts are the same as in *Example 3*, except that Plan C does not provide the section 402(f) notice in the summary plan description. Instead, the automated telephone system reads the section 402(f) notice to the participant. Plan C does not satisfy the notice requirement of section 402(f) by oral delivery of the section 402(f) notice through the automated telephone system.

Par. 3. Section 1.411(a)–11 is amended by:

1. Revising paragraphs (c)(2)(i) and (iii).
2. Adding paragraphs (f) and (g).
3. Removing the language “Written consent” in paragraph (c)(2)(ii) and (c)(3) and adding the language “Consent” in its place.

The revisions and additions read as follows:

§1.411(a)–11 Restriction and valuation of distributions.

* * * * *

(c) * * *

(2) *Consent.* (i) No consent is valid unless the participant has received a general description of the material features of the optional forms of benefit available under the plan. In addition, so long as a benefit is immediately distributable, a participant must be informed of the right, if any, to defer receipt of the distribution. Furthermore, consent is not valid if a significant detriment is imposed under the plan on any participant who does not consent to a distribution. Whether or not a significant detriment is imposed shall be determined by the Commissioner by examining the particular facts and circumstances.

* * * * *

(iii) A plan must provide a participant with notice of the rights specified in this paragraph (c)(2) at a time that satisfies either paragraph (c)(2)(iii)(A) or (B) of this section:

(A) This paragraph (c)(2)(iii)(A) is satisfied if the plan provides a participant with notice of the rights specified in this paragraph (c)(2) no less than 30 days and no more than 90 days before the date the distribution commences. However, if the participant, after having received this notice, affirmatively elects a distribution, a plan will not fail to satisfy the consent requirement of section 411(a)(11) merely because the distribution commences less than 30 days after the notice was provided to the participant, provided the plan administrator clearly indicates to the participant that the participant has a right to at least 30 days to consider whether to consent to the distribution.

(B) This paragraph (c)(2)(iii)(B) is satisfied if the plan—

(1) Provides the participant with notice of the rights specified in this paragraph (c)(2);

(2) Provides the participant with a summary of the notice within the time period described in paragraph (c)(2)(iii)(A) of this section; and

(3) If the participant so requests after receiving the summary described in para-

graph (c)(2)(iii)(B)(2) of this section, provides the notice to the participant without charge and within the period specified in paragraph (c)(2)(iii)(A) of this section (disregarding the 90-day period described in paragraph (c)(2)(iii)(A) of this section). The summary described in paragraph (c)(2)(iii)(B)(2) of this section must advise the participant of the right, if any, to defer receipt of the distribution, must set forth a summary of the distribution options under the plan, must refer the participant to the most recent occasion on which the notice was provided (and, in the case of a notice provided in any document containing information in addition to the notice, must identify that document and must indicate where the notice may be found in that document), and must advise the participant that, upon request, a copy of the notice will be provided without charge.

* * * * *

(f) *Medium for notice and consent*—
(1) *Notice.* The notice of a participant's rights described in paragraph (c)(2) of this section or the summary of that notice described in paragraph (c)(2)(iii)(B)(2) of this section may be provided either on a written paper document or through an electronic medium reasonably accessible to the participant. A notice or summary provided through an electronic medium must be provided under a system that satisfies the following requirements:

(i) The system must be reasonably designed to provide the notice or summary in a manner no less understandable to the participant than a written paper document.

(ii) At the time the notice or summary is provided, the participant must be advised that he or she may request and receive the notice on a written paper document, and, upon request, that document must be provided to the participant at no charge.

(2) *Consent.* The consent described in paragraphs (c)(2) and (3) of this section may be given either on a written paper document or through an electronic medium reasonably accessible to the participant. A consent given through an electronic medium must be given under a system that satisfies the following requirements:

(i) The system must be reasonably designed to preclude any individual other

than the participant from giving the consent.

(ii) The system must provide the participant with a reasonable opportunity to review and to confirm, modify, or rescind the terms of the distribution before the consent to the distribution becomes effective.

(iii) The system must provide the participant, within a reasonable time after the consent is given, a confirmation of the terms (including the form) of the distribution either on a written paper document or through an electronic medium under a system that satisfies the requirements of paragraph (f)(1) of this section.

(g) *Examples.* The provisions of paragraph (f) of this section are illustrated by the following examples:

Example 1. A qualified plan (Plan A) permits participants to request distributions by e-mail. Under Plan A's system for such transactions, a participant must enter his or her account number and personal identification number (PIN); this information must match that in Plan A's records in order for the transaction to proceed. If a participant changes his or her PIN, the participant may not proceed with a transaction until Plan A has sent confirmation of the change to the participant. If a participant requests a distribution from Plan A by e-mail, the plan administrator provides the participant with a section 411(a)(11) notice by e-mail. The plan administrator also advises the participant that he or she may request the section 411(a)(11) notice on a written paper document and that, if the participant so requests, the written paper document will be provided at no charge. To proceed with the distribution by e-mail, the participant must acknowledge receipt, review, and comprehension of the section 411(a)(11) notice and must consent to the distribution within the time required under section 411(a)(11). Within a reasonable time after the participant's consent, the plan administrator, by e-mail, sends confirmation of the distribution to the participant and advises the participant that he or she may request the confirmation on a written paper document that will be provided at no charge. Plan A does not fail to satisfy the notice or consent requirement of section 411(a)(11) merely because the notice and consent are provided other than through written paper documents.

Example 2. The facts are the same as in *Example 1*, except that, instead of sending a confirmation of the distribution by e-mail, the plan administrator, within a reasonable time after the participant's consent, sends the participant an account statement for the period that includes information reflecting the terms of the distribution. Plan A does not fail to satisfy the consent requirement of section 411(a)(11) merely because the consent is provided other than through a written paper document.

Example 3. A qualified plan (Plan B) permits participants to request distributions through the Plan B web site (Internet or intranet). Under Plan B's system for such transactions, a participant must

enter his or her account number and personal identification number (PIN); this information must match that in Plan B's records in order for the transaction to proceed. If a participant changes his or her PIN, the participant may not proceed with a transaction until Plan B has sent confirmation of the change to the participant. A participant may request a distribution from Plan B by following the applicable instructions on the Plan B web site. After the participant has requested a distribution, the participant is automatically shown a page on the web site containing a section 411(a)(11) notice. Although this page of the web site may be printed, the page also advises the participant that he or she may request the section 411(a)(11) notice on a written paper document and that, if the participant so requests, the written paper document will be provided at no charge. To proceed with the distribution through the web site, the participant must acknowledge review and comprehension of the section 411(a)(11) notice and must consent to the distribution within the time required under section 411(a)(11). The web site requires the participant to review and confirm the terms of the distribution before the transaction is completed. After the participant has given consent, the Plan B web site confirms the distribution to the participant and advises the participant that he or she may request the confirmation on a written paper document that will be provided at no charge. Plan B does not fail to satisfy the notice or consent requirement of section 411(a)(11) merely because the notice and consent are provided other than through written paper documents.

Example 4. A qualified plan (Plan C) permits participants to request distributions through Plan C's automated telephone system. Under Plan C's system for such transactions, a participant must enter his or her account number and personal identification number (PIN); this information must match that in Plan C's records in order for the transaction to proceed. If a participant changes his or her PIN, the participant may not proceed with a transaction until Plan C has sent confirmation of the change to the participant. Plan C provides only the following distribution options: a lump sum and annual installments over 5, 10, or 20 years. A participant may request a distribution from Plan C by following the applicable instructions on the automated telephone system. After the participant has requested a distribution, the automated telephone system reads the section 411(a)(11) notice to the participant. The automated telephone system also advises the participant that he or she may request the notice on a written paper document and that, if the participant so requests, the written paper document will be provided at no charge. Before proceeding with the distribution transaction, the participant must acknowledge comprehension of the section 411(a)(11) notice and must consent to the distribution within the time required under section 411(a)(11). The automated telephone system requires the participant to review and confirm the terms of the distribution before the transaction is completed. After the participant has given consent, the automated telephone system confirms the distribution to the participant and advises the participant that he or she may request the confirmation on a written paper document that will be provided at no charge. Because Plan C has relatively few and simple distribution options, the provision of the section 411(a)(11) notice over the automated

telephone system is no less understandable to the participant than a written paper notice. Plan C does not fail to satisfy the notice or consent requirement of section 411(a)(11) merely because the notice and consent are provided other than through written paper documents.

Example 5. The facts are the same as in *Example 4*, except that, pursuant to Plan C's system for processing such transactions, a participant who so requests is transferred to a customer service representative whose conversation with the participant is recorded. The customer service representative provides the section 411(a)(11) notice from a prepared text and processes the participant's distribution in accordance with predetermined instructions of the plan administrator. Plan C does not fail to satisfy the notice or consent requirement of section 411(a)(11) merely because the notice and consent are provided other than through written paper documents.

PART 35—TEMPORARY EMPLOYMENT TAX AND COLLECTION OF INCOME TAX AT SOURCE REGULATIONS UNDER THE TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982

Par. 4. The authority citation for part 35 is revised to read as follows:

Authority: 26 U.S.C. 6047(e), 7805; 68A Stat. 917; 96 Stat. 625; Pub. L. 97-248 (96 Stat. 623).

Section 35.3405-1 also issued under 26 U.S.C. 3405(e)(10)(B)(iii).

Par. 5. Section 35.3405-1 is amended by adding d-35 and d-36 to read as follows:

§35.3405-1. Questions and answers relating to withholding on pensions, annuities, and certain other deferred income.

* * * * *

d-35. Q. Through what medium may a payor provide the notice required under section 3405 to a payee?

A. A payor may provide the notice required under section 3405 (including the abbreviated notice described in d-27) to a payee either on a written paper document or through an electronic medium reasonably accessible to the payee. A notice provided through an electronic medium must be provided under a system that satisfies the following requirements:

(a) The system must be reasonably designed to provide the notice in a manner no less understandable to the payee than a written paper document.

(b) At the time the notice is provided, the payee must be advised that the payee

may request and receive the notice on a written paper document, and, upon request, that document must be provided to the payee at no charge.

d-36. Q. Are there examples that illustrate the provisions of d-35 of this section?

A. The provisions of d-35 of this section are illustrated by the following examples:

Example 1. An employer deferred compensation plan (Plan A) permits participants to request distributions by e-mail. Under Plan A's system for such transactions, a participant must enter his or her account number and personal identification number (PIN); this information must match that in Plan A's records in order for the transaction to proceed. If a participant changes his or her PIN, the participant may not proceed with a transaction until Plan A has sent confirmation of the change to the participant. The plan administrator is the payor. If a participant requests a distribution from Plan A by e-mail, the plan administrator provides the participant with the notice required under section 3405 by e-mail. The plan administrator also advises the participant that he or she may request the notice on a written paper document and that, if the participant so requests, the written paper document will be provided at no charge. To proceed with the distribution by e-mail, the participant must acknowledge receipt, review, and comprehension of the notice. The plan administrator does not fail to satisfy the notice requirement of section 3405 merely because the notice is provided to the participant other than through a written paper document.

Example 2. An employer deferred compensation plan (Plan B) permits participants to request distributions through the Plan B web site (Internet or intranet). Under Plan B's system for such transactions, a participant must enter his or her account number and personal identification number (PIN); this information must match that in Plan B's records in order for the transaction to proceed. If a participant changes his or her PIN, the participant may not proceed with a transaction until Plan B has sent confirmation of the change to the participant. The plan administrator is the payor. A participant may request a distribution from Plan B by following the applicable instructions on the Plan B web site. After the participant has requested a distribution, the participant is automatically shown a page on the web site containing the notice required by section 3405. Although this page of the web site may be printed, the page also advises the participant that he or she may request the notice on a written paper document and that, if the participant so requests, the written paper document will be provided at no charge. To proceed with the distribution through the web site, the participant must acknowledge review and comprehension of the notice. The plan administrator does not fail to satisfy the notice requirement of section 3405 merely because the notice is provided to the participant other than through a written paper document.

Example 3. An employer deferred compensation plan (Plan C) permits participants to request distributions through Plan C's automated telephone system. Under Plan C's system for such transactions, a participant must enter his or her account number and

personal identification number (PIN); this information must match that in Plan C's records in order for the transaction to proceed. If a participant changes his or her PIN, the participant may not proceed with a transaction until Plan C has sent confirmation of the change to the participant. The plan administrator is the payor. A participant may request a distribution from Plan C by following the applicable instructions on the automated telephone system. After the participant has requested a distribution, the automated telephone system reads the notice required by section 3405 to the participant. The automated telephone system also advises the participant that he or she may request the notice on a written paper document and that, if the participant so requests, the written paper document will be provided at no charge. Before proceeding with the distribution transaction, the participant must acknowledge comprehension of the notice. The plan administrator does not fail to satisfy the notice requirement of section 3405 merely because the notice is provided to the participant other than through a written paper document.

Example 4. The facts are the same as in *Example 3*, except that, pursuant to the system for processing such transactions, a participant who so requests is transferred to a customer service representative whose conversation with the participant is recorded. The customer service representative provides the notice required by section 3405 by reading from a prepared text. The plan administrator does not fail to satisfy the notice requirement of section 3405 merely because the notice is provided to the participant other than through a written paper document.

* * * * *

John M. Dalrymple,
*Acting Deputy Commissioner
of Internal Revenue.*

(Filed by the Office of the Federal Register on December 17, 1998, 8:45 a.m., and published in the issue of the Federal Register for December 18, 1998, 63 F.R. 70071)

I. Reporting Roth IRA Conversions and Recharacterizations

Holders of traditional IRAs may convert these accounts to Roth IRAs if they meet the eligibility requirements and include any previously untaxed amounts converted in their gross income for the year of conversion. For conversions in 1998, the includible amount may be spread over 4 years, at the election of the taxpayer. A conversion may be undone by recharacterizing the converted amounts back to the traditional IRA.

Some questions have arisen about the proper reporting of conversions, recharacterizations, and reconversions to Roth IRAs, particularly regarding the reconciliation of amounts on Forms 1099-R issued by account trustees with amounts to be entered on Form 8606 and Form 1040.

The following comprehensive example clarifies this reporting.

Example: Mr. Smith has the following IRA activity in 1998:

Date	Activity
2/19/98	Mr. Smith contributes \$2,000 to a Roth IRA.
2/19/98	Mr. Smith converts the entire \$8,000 balance in his traditional IRA to a Roth IRA. The converted amount was placed into an account separate from the Roth contribution account. His total basis in the traditional IRA was \$2,000 (from a nondeductible contribution in an earlier year).
9/10/98	The fair market value of Mr. Smith's conversion account decreased from \$8,000 to \$7,000. Mr. Smith recharacterizes the entire remaining balance of \$7,000 to a traditional IRA.
9/10/98	Mr. Smith reconverts the \$7,000 from the traditional IRA back to a Roth IRA.

In 1999, Mr. Smith receives three Forms 1099-R: one for the original conversion of \$8,000, another for the \$7,000 recharacterization, and a third one for the subsequent reconversion of \$7,000.

Completion of Form 8606: Mr. Smith should complete the identifying information above Part I. He should leave Part I

blank. Mr. Smith completes Part II of Form 8606 as follows:

Line 14a. Mr. Smith enters \$15,000 on this line. This is the sum of the amounts reported to him in box 1 of the Forms 1099-R he received for the \$8,000 conversion on February 19, 1998, and the \$7,000 reconversion on September 10, 1998.

Line 14b. Although Mr. Smith recharacterized \$7,000 from his Roth conversion account to his traditional IRA, he reports \$8,000 on line 14b. This is because line 14a includes \$8,000 from his original conversion and he recharacterized the entire remaining balance of \$7,000. He enters \$8,000 on line 14b to "zero out" the conversion and subsequent recharacterization. Otherwise, Mr. Smith would be taxed on the \$1,000 decline in market value in his Roth conversion account before the recharacterization.

Line 14c. Mr. Smith reports \$7,000 on this line (\$15,000-\$8,000).

Line 15. Mr. Smith refers to the chart on page 5 of the Form 8606 instructions to determine the amount to enter on this line. As a result, he enters \$2,000, which is his prior year nondeductible contribution to a traditional IRA.

Line 16. The taxable amount of the conversion is \$5,000 (\$7,000-\$2,000).

Line 17. Mr. Smith elects to have the taxable amount spread over 4 years. In 1998 and in each of the next 3 years, Mr. Smith is taxed on \$1,250.

Part III. Mr. Smith does not complete Part III. Although he received a Form 1099-R for his recharacterization of \$7,000 from the Roth IRA to a traditional IRA, the recharacterization is not a distribution that is to be reported on line 18 of Part III. It is merely a trustee-to-trustee transfer of funds between IRA accounts.

Completion of Form 1040: Mr. Smith includes \$22,000 on line 15a. This is the total IRA distributions that were reported to him in box 1 of the Forms 1099-R he received. Mr. Smith includes \$1,250, the amount of the conversion that is taxable in 1998, on line 15b. This is the amount from line 17 of Form 8606.

II. Clarification of Amount Subject to 10% Additional Tax

The **Note** after line 26 of Form 8606 is incomplete. Regardless of whether you have an amount on line 22 or 25 of Form 8606, you may be subject to an additional 10% tax. The **Note** should read as follows:

Note: If you receive a Roth IRA distribution before reaching age 59½, you may be subject to an additional 10% tax. See Form 5329. Include on line 1 of Form 5329 the **smaller** of the amount on line 20 **or** the sum of the amounts on lines 16 and 25."

Please disregard the paragraph headed **Lines 22 and 25-Additional 10% Tax** on page 6 of the instructions for Form 8606, as well as the first complete paragraph in the middle column of page 3 of the instructions for Form 5329.

III. Correction to Computation of Modified AGI for Purposes of Roth IRAs

Under **Roth IRAs** on page 2 of the Form 8606 instructions, item 1 under **Modified AGI for purposes of Roth IRAs** should include a reference to Form 1040A, line 10b.

IV. Correction to Ed IRA Contribution Worksheet

Line 2 of the worksheet on page 3 of the Form 8606 instructions should read: "Enter \$150,000 if married filing jointly; or \$95,000 for all other filers." The referenced amount for married filing separately should be deleted.