

MEMO# 32467

May 19, 2020

ICI Sends Letter to Treasury Regarding Guidance on 403(b) Termination Under SECURE Act

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May 19, 2020 TO: ICI Members
Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension RE: ICI Sends Letter to Treasury Regarding Guidance on 403(b) Termination Under SECURE Act

ICI (jointly with the American Retirement Association (ARA)) sent the attached letter to the Treasury Department on guidance required by Section 110 of the SECURE Act,[\[1\]](#) relating to the distribution of 403(b)(7) custodial accounts upon termination of a 403(b) plan. The letter follows up on a telephone meeting held on March 24, 2020 with representatives from ICI, ARA, Treasury and IRS to discuss the implementation of Section 110. The legislation directs the Secretary of the Treasury to issue guidance providing that, if an employer terminates the plan under which amounts are contributed to a custodial account under section 403(b)(7), the plan administrator or custodian may distribute an individual custodial account in kind to a participant or beneficiary of the plan and the distributed custodial account shall be maintained by the custodian on a tax-deferred basis as a section 403(b)(7) custodial account, similar to the treatment of fully-paid individual annuity contracts under Revenue Ruling 2011-7, until amounts are actually paid to the participant or beneficiary.

The letter reiterates several points discussed on the call relating to the in-kind distribution of custodial accounts, an option long-supported by ICI. Our key points include the following:

1. Guidance should be simple. We recommend following the approach used in Revenue Ruling 2011-7[\[2\]](#) (particularly Situations 1 and 2) which describes circumstances in which plan termination distributions are effectuated by distributing fully-paid individual insurance annuities (or issuing individual certificates under a group annuity contract) to all participants and beneficiaries.
2. Guidance should be permissive. We recommend that the in-kind distribution of custodial accounts should be one tool among many to choose from when terminating a 403(b) plan. In other words, it should be up to the employer (or vendor if the employer no longer exists) to determine whether to employ in-kind distribution of custodial accounts as part of a plan termination.

3. Guidance should be flexible in terms of the mechanics of distribution and application to different situations (including application to plans funded through group custodial accounts). The mechanics of effectuating an in-kind distribution of a custodial account could vary from firm to firm and the guidance should not specify one particular method.
4. Guidance should not create adverse inferences with respect to years prior to 2009. We recommend that the guidance should be presented in a way that does not create adverse inferences for plan terminations occurring prior to the effective date of the guidance.

The letter also outlines several additional issues that guidance could address, including providing additional clarity around the tax treatment of such an in-kind distribution (e.g., that the in-kind distribution of an individual custodial account is not reportable on Form 1099-R, is not a distribution requiring a 402(f) notice, and does not require withholding) and other questions relating to the termination of a 403(b) plan.

An appendix to the letter offers sample language that could be used in guidance implementing Section 110, based on the structure and language of Revenue Ruling 2011-7.

Elena Barone Chism
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[Attachment](#)

endnotes

[1] For a summary of the SECURE Act, see ICI Memorandum No. 32118, dated December 20, 2019. Available here: https://www.ici.org/my_ici/memorandum/memo32118. ICI previously asked Treasury and IRS for guidance and relief relating to certain other provisions of the SECURE Act that became effective within days after enactment. See ICI Memorandum No. 32170, dated January 23, 2020. Available here: https://www.ici.org/my_ici/memorandum/memo32170.

[2] Revenue Ruling 2011-7 is available at <https://www.irs.gov/pub/irs-drop/rr-11-07.pdf>.