

**MEMO# 23775**

September 10, 2009

## **Treasury Releases Package of Guidance on Retirement Savings; ICI Conference Call Scheduled for September 21**

[23775]

September 10, 2009

TO: PENSION COMMITTEE No. 18-09

PENSION OPERATIONS ADVISORY COMMITTEE No. 19-09    RE: TREASURY RELEASES  
PACKAGE OF GUIDANCE ON RETIREMENT SAVINGS; ICI CONFERENCE CALL SCHEDULED FOR  
SEPTEMBER 21

The Treasury Department and IRS issued several pieces of retirement plan guidance as part of an Obama Administration initiative to help individuals save for retirement. [\[1\]](#) The package includes guidance related to automatic enrollment, automatic escalation of contributions, contributing the value of unused paid leave to a plan, and an updated and revamped model 402(f) notice. The Administration also announced that individuals will be able to purchase U.S. savings bonds directly with their tax refunds and unveiled a new IRS website for small employers interested in offering a retirement plan. The guidance and initiatives are described briefly below. The Institute will hold a conference call for the Pension and Pension Operations Advisory Committees on September 21, 2009 at 2pm ET to review these developments and seek member input on whether implementing the measures will raise any legal issues or operational concerns for which the Institute should seek clarifications or additional guidance.

If you would like to participate in the call, please complete the attached response form and fax or email it to Brenda Turner at 202-326-5841 or [bturner@ici.org](mailto:bturner@ici.org) by noon on Friday, September 18, 2009. To participate, please dial 1-888-324-8127 and enter passcode 49762.

## *Automatic Enrollment*

The following guidance is meant to make it easier for plan sponsors, particularly small employers, to adopt automatic enrollment in 401(k) and SIMPLE IRA plans:

- Notice 2009-65 contains sample amendments sponsors of 401(k) plans can use to quickly adopt an automatic contribution arrangement or an eligible automatic contribution arrangement under Code § 414(w) (permitting 90-day withdrawals). [\[2\]](#) Because each amendment is a sample amendment, plan sponsors are not required to adopt either amendment verbatim. Adoption of one of the sample amendments will not result in loss of reliance on a favorable opinion, advisory or determination letter. Similarly, adoption of one of the amendments will not affect the pre-approved status of a master and prototype or volume submitter plan. Plan sponsors must adopt a chosen amendment by the later of the end of the plan year in which the amendment is effective or, if applicable, the last day of the first plan year beginning on or after January 1, 2009 (but a later deadline may apply to a governmental plan).
- Revenue Ruling 2009-30 answers technical questions surrounding the use of automatic contribution increases, including in a 401(k) plan designed to satisfy the qualified automatic contribution arrangement safe harbor under Code § 401(k)(13) or the requirements for an eligible automatic contribution arrangement under Code § 414(w).
- Notice 2009-66 confirms that SIMPLE IRA plans can implement automatic enrollment and answers some technical questions on automatic enrollment particular to SIMPLE IRA plans, including questions relating to the participant notice requirements and use of a designated financial institution. The Notice also requests comments on whether additional guidance should be issued on SIMPLE IRA plans that include eligible automatic contribution arrangements under Code § 414(w). A separate notice, Notice 2009-67, provides a model amendment for prototype sponsors of SIMPLE IRA plans to use in adding an automatic contribution arrangement.

## *Converting Unused Paid Leave to Retirement Savings*

The package contains two pieces of guidance on the treatment of amounts attributable to unused paid leave contributed to a plan. Revenue Ruling 2009-31 states that plan amendments requiring or permitting annual contributions of the dollar equivalent of unused paid time off to a qualified profit sharing plan do not cause the plan to fail to meet the requirements of Code §§ 401(a) (assuming other requirements are met) or, if applicable, 401(k). In addition, the participant would not include the value of these contributions in gross income until distributions from the plan are made. With respect to the value of unused paid time off contributed to a plan at termination of employment, Revenue Ruling 2009-32 makes similar conclusions.

## *Updated Model 402(f) Notice*

In Notice 2009-68, the IRS updated its safe harbor model notice to participants regarding eligible rollover distributions, known as the “402(f) notice.” Under Code § 402(f), the notice required to be provided to participants in plans qualified under 401(a), 403(a), or 403(b) and governmental 457(b) plans, generally must describe the rollover rules and the consequences of not rolling over an eligible rollover distribution (e.g., income tax withholding). The updated model notice reflects various changes made under the Economic Growth and Tax Reconciliation Act of 2001 (EGTRRA) and the Pension Protection Act of 2006 (PPA), such as the ability to make designated Roth contributions to a plan, the requirement to automatically roll over to an IRA any mandatory distribution exceeding \$1,000, the ability to make direct rollovers from any eligible retirement plan to a Roth IRA, and the ability of non-spouse beneficiaries to roll over distributions from eligible retirement plans to an inherited IRA.

In addition to updating the model for changes in applicable laws and regulations, the new notice aims to simplify the presentation of information to participants. The format has been changed to a series of questions and answers, organized into two main subject areas: General Information About Rollovers and Special Rules and Options. There are two versions of the notice – one for distributions not from a designated Roth account and the other for distributions from a designated Roth account.

## *Receipt of Tax Refund as Savings Bond*

Taxpayers filing for tax year 2009 will have another way to receive their tax refunds, in addition to direct deposit into an IRA or savings account. There will be a box on the tax return for electing to receive the refund in the form of a “Series I” US savings bond without having to open an account at Treasury. [3] The paper savings bond would be mailed to the taxpayer. Initially, taxpayers receiving refunds will be able to buy these bonds only in their own names, but in 2011, the bonds will be available in the name of the taxpayer with a joint owner such as a child or grandchild.

## *New Website for Small Employers*

The IRS unveiled a new website -- <http://www.retirementplans.irs.gov/> -- designed to help small employers select and maintain a retirement plan. The site includes information on IRA-based plans, like SEPs and SIMPLEs, in addition to 401(k), profit sharing, and defined benefit plans.

## *Reiteration of Budget Proposals*

As part of the announcement of the initiatives described above, the Administration reiterated its support for the Automatic IRA and expanded Saver's Credit proposals, both of which require Congressional action. The Automatic IRA proposal generally would require companies to automatically enroll into a payroll deduction IRA any employees not covered by a workplace retirement plan. The expanded Saver's Credit would replace the current Saver's Credit under Code § 25B with a refundable credit paid as a matching contribution into the taxpayer's retirement account and would extend eligibility for the credit to a broader range of incomes. The President included these proposals in his budget but they have not been taken up in this Congress yet.

Elena Barone Chism  
Associate Counsel

### [Attachment](#)

#### **endnotes**

[1] The general announcement of retirement security initiatives is available at [http://www.irs.gov/pub/irs-tege/retirement\\_savings\\_fact\\_sheet.pdf](http://www.irs.gov/pub/irs-tege/retirement_savings_fact_sheet.pdf). A page on the IRS website contains links to each of the guidance items described herein: <http://www.irs.gov/retirement/article/0,,id=212061,00.html>. Also, see the IRS Retirement News for Employers, Special Edition September 2009 newsletter, which includes links and brief descriptions of the guidance, available at <http://www.irs.gov/retirement/article/0,,id=122823,00.html>.

[2] See [Memorandum](#) to Pension Members No. 14-09 [23296], dated March 4, 2009.

[3] A set of questions and answers on the savings bond option is available at [http://www.irs.gov/pub/irs-tege/ibond\\_questions\\_answers.pdf](http://www.irs.gov/pub/irs-tege/ibond_questions_answers.pdf).