

MEMO# 20550

November 7, 2006

IRS Issues Final Regulations on Electronic Plan Communications

©2006 Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice. [20550] November 7, 2006 TO: OPERATIONS COMMITTEE No. 30-06 PENSION MEMBERS No. 66-06 TAX COMMITTEE No. 41-06 TRANSFER AGENT ADVISORY COMMITTEE No. 74-06 RE: IRS ISSUES FINAL REGULATIONS ON ELECTRONIC PLAN COMMUNICATIONS The Internal Revenue Service has issued final regulations¹ providing guidance on the use of electronic media to provide certain notices to plan participants and beneficiaries and to transmit participant elections relating to employee benefit arrangements. The final regulations also incorporate the provisions of the Electronic Signatures in Global and National Commerce Act (E-SIGN). The final regulations generally reflect the provisions of the 2005 proposed regulations,² with certain revisions, including those requested by the Institute. For example, the proposed regulations did not address IRAs, other than SEP and SIMPLE IRAs. The final regulations provide, however, that the regulations apply to individual retirement plans, including Roth IRAs under section 408A of the Internal Revenue Code and deemed IRAs under section 408(q).³ Furthermore, section 1.401(a)-21(a)(3)(ii) of the final regulations states that the regulations do not alter Code requirements applicable to tax reporting. In addition, the final regulations allow electronic notarization of spousal consent under Code section 417 if the individual's signature is witnessed in the physical presence of a notary public. Recognizing the possibility of future technological advances, the regulations also delegate to the IRS Commissioner the ability to provide that the use of procedures under an electronic system would be

1 The final regulations are available at <http://edocket.access.gpo.gov/2006/pdf/E6-17528.pdf>. 2 See Memorandum to Operations Committee No. 15-05, Pension Members No. 32-05, Tax Committee No. 24-05, and Transfer Agent Advisory Committee No. 37-05 [19037], dated July 26, 2005. 3 Treas. Reg. 1.401(a)-21(a)(2)(iii). 2 deemed to satisfy the general physical presence requirement, but only if the procedures provide the same safeguards as the physical presence requirement. The final regulations apply to notices provided, and to participant elections made, on or after January 1, 2007. Plans that comply with the requirements of the regulations on or after October 1, 2000, and before January 1, 2007, however, will not be treated as failing to provide an applicable notice or make a participant election merely because the notice or election was not in writing or in written form. Elena Barone Assistant Counsel

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