

MEMO# 11633

February 15, 2000

IRS ISSUES FINAL REGULATIONS ON ELECTRONIC PLAN ADMINISTRATION

1 See Institute Memorandum to Pension Members No. 77-98, dated December 21, 1998. 2 See Institute Memorandum to Pension Committee 16-99 and Pension Operations Advisory Committee No. 17-99, dated March 17, 1999. The Institute also submitted comments prior to the issuance of the proposed regulations in response to a more general IRS request for comments on the use of paperless technologies in plan administration. See Institute Memorandum to Pension Committee No. 67-98 and Pension Operations Advisory Committee No. 50-98, dated October 8, 1998. 3 See Institute Memorandum to Operations Members No. 8-99, Pension Members No. 13-99, Pension Operations Advisory Committee No. 11-99, Tax Members No. 12-99 and Transfer Agent Advisory Committee No. 16-99, dated February 25, 1999. [11633] February 15, 2000 TO: OPERATIONS COMMITTEE No. 4-00 PENSION MEMBERS No. 14-00 PENSION OPERATIONS ADVISORY COMMITTEE No. 13-00 TAX COMMITTEE No. 6-00 TRANSFER AGENT ADVISORY COMMITTEE No. 10-00 RE: IRS ISSUES FINAL REGULATIONS ON ELECTRONIC PLAN ADMINISTRATION

The Internal Revenue Service has issued final regulations on the standards for electronic transmission of notices and consents required in connection with qualified retirement plan distribution. The final regulations make only minor changes to the standards set forth in the proposed regulations.¹ The regulations permit (1) electronic delivery of the section 3405 withholding notice, the section 411(a)(11) notice of distribution options and the right to defer distributions, and the section 402(f) rollover notice; (2) electronic transmission of participant consent to distributions under section 411(a)(11); and (3) provision of the sections 411(a)(11) and 402(f) notices more than 90 days before a distribution in cases where the plan provides a summary of the notice within 90 days before the distribution. The regulations are effective for plan years beginning on or after January 1, 2001. In response to comments, including comments submitted by the Institute², the final regulations were modified as follows: Section 3405 and Form W-4P. The proposed regulations indicated that the section 3405 tax withholding notice could be delivered electronically. In Announcement 99-63, the Service authorized the electronic transmission of the corresponding Form W-4P election, but did not further specify what constituted satisfactory electronic transmission of the election. The Institute requested clarification that (1) the electronic transmission standard could be satisfied by telephonic delivery of the Form W-4P election, (2) PIN numbers need not be entered as the final entry in the submission of the form electronically where they have been entered at the beginning of the electronic session (thus conforming 4 In this regard, the current regulation regarding Form W-4 requires that an electronic signature "be the final entry in the employee's Form W-4 submission." Section 31.3402(f)(5)-1(c)(2)(iii)(B) of the regulations. with current industry practices), and (3) the retention of the Form W-4P in the form of audio recordings,

automated telephone response entries or notations by telephone representatives would satisfy recordkeeping requirements. In its final regulations and discussion in the preamble, the Service indicates that Form W-4P elections may be transmitted through a telephone system so long as the system is consistent with Announcement 99-6 and requirements set forth at section 31.3402(f)(5)-1(c) of the regulations. Section 31.3402(f)(5)-1(c) sets forth the standards for the electronic transmission of Form W-4. The Service refers to the preamble to that regulation, which states that “[i]f an employer chooses to establish an electronic system, the employer will be free to determine the type of system (such as telephone or computer) or systems available to its employees.” With respect to the placement of the electronic signatures or PINs at the beginning, rather than at the end, of an automated telephonic session in which the section 3405 election is being made, the Service notes that they are considering the issue and anticipate issuing additional guidance on the question.⁴ With respect to record retention, the Service does not offer explicit guidance in the final regulation. Its reference to section 31.3402(f)(5)-1(c)(i) of the regulations, which addresses Form W-4, however, is helpful. That regulation states that an electronic system used to file the form “must document all occasions of employee access that result in the filing” The regulation also states that the Service must be supplied upon request with a “hardcopy” of the electronic form; this need not be a facsimile of the paper form, but must provide “exactly the same information.” Section 31.3402(f)(5)-1(c)(i). The Service also has clarified that electronic delivery of the annual notice required under section 3405(e)(10)(B)(i)(III) to recipients of periodic payments is permitted. Section 402(f). In the final regulation, the Service clarified that the summary notice permitted under the proposed regulations must include information referring the participant to the most recent version of the full notice; the summary notice need not state the precise date on which a particular participant originally received the full section 402(f) notice. In the preamble to the regulations, the Service notes that generally this reference could be made by identifying the year in which the most recent version of the full notice was created. If only one version of the notice had been provided in the past, no identification by date would be needed. Furthermore, if the full notice were constantly available, for instance on the plan’s web site and kept up-to-date, it would be adequate to merely state that fact. However, if the full section 402(f) notice is provided in another document, such as a summary plan description, the summary notice must identify the document and provide a reasonable indication of where the notice may be found in the document, by identifying, for example, a page number, section heading, the title of the notice or other reasonable means of directing the individual to the full notice. (The Institute had commented that it would be impractical for third party telephone representatives servicing numerous plans to provide such specific information and direction to each participant.) The Service seeks comments on developing a model summary notice that could be used on an automated telephone system. The example provided in the proposed regulations was removed from the final regulations, based on comments that it was too long and complex. Section 411(a)(11) Consents. The Service retained the rule and standards for electronic consents to distribution as proposed and rejected comments suggesting that a 7-day right of revocation or written confirmation requirement be added to the proposed rule. Russell Galer Senior Counsel Attachment Note: Not all recipients receive the attachment. To obtain a copy of the attachment referred to in this Memo, please call the ICI Library at (202) 326-8304, and ask for attachment number 11633. ICI Members may retrieve this Memo and its attachment from ICINet (<http://members.ici.org>).

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