

**MEMO# 10108**

July 9, 1998

## **IRS REQUEST FOR INFORMATION ON NEW PAPERLESS TECHNOLOGIES**

[10108] July 9, 1998 TO: PENSION COMMITTEE No. 44-98 PENSION OPERATIONS ADVISORY COMMITTEE No. 27-98 RE: IRS REQUEST FOR INFORMATION ON NEW PAPERLESS TECHNOLOGIES

The Internal Revenue Service and Department of the Treasury are soliciting comments on the use of new technologies in retirement plan administration. The request relates to a legislative directive, enacted as part of the Taxpayer Relief Act of 1997, that requires the Department of the Treasury and the Department of Labor to review regulatory requirements relating to retirement plans as they apply to the use of new technologies, to issue guidance that would facilitate the implementation of these technologies and to assure there are adequate protections for plan participants. Specifically, the Service and Treasury are reviewing notice, election, consent, and disclosure requirements and also determining the extent that the "writing" requirements of the Internal Revenue Code relating to retirement plans should be interpreted to permit paperless transactions. In Announcement 98-62, the IRS seeks comments describing new technologies commonly used in plan administration and the manner in which the rights of participants are adequately protected when using these technologies. The Service is particularly interested in comments regarding the paperless administration of participant elections and consents, plan notices, plan loans and distributions. Spousal consent rules will not likely be addressed in initial guidance. Additionally, the IRS poses the following specific questions for comment: 1. Would it be preferable for guidance to focus on specific uses of existing technologies or to take the form of generally applicable principles or standards? 2. To what extent, if any, do the terms "election" and "consent" imply a writing or signature requirement? 3. To what extent should paperless identification mechanisms (such as PINs and passwords) be treated as satisfying a legal "writing" or signature requirement? 4. Should the requirement to provide a notice during a specified period (such as the 402(f) notice) be deemed satisfied if provided in writing on a less frequent basis and the participant is provided an oral or recorded summary of the notice and an opportunity to obtain the full notice when initiating a transaction to which the notice relates? 5. What are the appropriate standards for authentication, substantiation and security in paperless administration and record-keeping? - 2 - 6. What are the appropriate standards for ensuring that participants have sufficient time and opportunity to consider all relevant options when making retirement savings decisions? For instance, should participants be able to review and change a transmitted election or instruction? 7. What types of new or paperless technologies do plan sponsors and administrators foresee using in the future? What practical and legal issues might arise from their use and how might they be designed to protect the rights of participants? A copy of Announcement 98-62 is attached. Comments must be submitted by October 5, 1998.

Please note, the Institute will be arranging a conference call to discuss submitting a comment letter. Russell G. Galer Senior Counsel Attachment

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