COMMENT LETTER

January 26, 2009

ICI Comments on IRS Proposal on Notices of Failure to Defer Distributions, January 2009

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Washington, DC, January 26, 2009 - ICI has commented on a proposed IRS regulation, mandated by the Pension Protection Act of 2006 (PPA), regarding the content of benefit plan distribution notices to participants.

Background

Participants in 401(k) and other employer-sponsored retirement plans face an important decision when they retire or change jobs: whether to take their plan assets as a distribution, roll over those assets to another plan or Individual Retirement Account (IRA), or defer distribution and leave the assets with the plan.

For accounts with a value of more than $5,000, IRS rules generally require that employers obtain consent from 401(k) and other plan participants to distribute their accounts when their employment ends. This consent is valid only if the participant is informed of the right to defer receipt of the distribution.

The PPA directed that these regulations be modified to require that the notice of a participant’s right to defer distribution must describe the “consequences of failing to defer” the distribution.

The IRS issued a proposal in October 2008 providing guidance to employers on the content of this required notice. In it, the IRS advised that to satisfy PPA requirements notices must describe possible implications of taking a distribution from a plan—such as tax implications and investment option availability—that might influence a participant’s decision on whether or not to take a distribution.

Previous interim guidance on the PPA (Notice 2007-7) appeared to require that departing employees receive information, such as the enrollment package and the prospectus, which is routinely provided by the plan administrator upon enrollment and over the course of the plan enrollment, rather than more focused information related to the deferral decision. The new proposed guidance instead advises that the notice offer key information relevant to deferral decisions. The notice would also include contact information for obtaining additional information.

ICI submitted a comment letter on January 7, 2009, to state its support of the requirements regarding plan investment options and to outline the benefits of the proposed approach.

ICI Position

ICI supports the proposal's notice requirements regarding plan investment options. The regulations improve upon the IRS's 2007 interim guidance by focusing the notice given to departing employees on the key information they need to decide whether to leave their retirement accounts assets in the plan, rather than duplicating information they have already received.

The proposal strikes the right balance by alerting participants that the plan may have investments, or fee structures, different from those available in an IRA, and notifying participants that more information is available upon request. This approach will not overwhelm participants with information that obscures the essential items, while also assuring that participants have access to information that is necessary in their plan benefit decision-making.

Related Links

- 401(k) Plan Resource Center
- 401(k) Service Provider Proposal Will Improve Disclosure to Plan Fiduciaries
- ICI Comments on Participant Fee Disclosure Proposal
- Statement of Paul Schott Stevens at Ways and Means Committee Hearing on Appropriateness of Retirement Plan Fees
- ICI President Applauds Labor Department's QDIA Decision
- Department of Labor Proposal Will Advance Interests of Retirement Plan Participants

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