

COMMENT LETTER

October 12, 2005

ICI Comment Letter on IRS Proposal Regarding Electronic Retirement Plan Communications (pdf)

October 12, 2005 VIA ELECTRONIC SUBMISSION CC:PA:LPD:PR (REG-138362-04) Room 5203 Internal Revenue Service Post Office Box 7604 Ben Franklin Station Washington, DC 20044
Re: Proposed Regulations on Electronic Plan Communications Ladies and Gentlemen: The Investment Company Institute¹ commends the Internal Revenue Service and the Treasury Department for their ongoing efforts to facilitate the use of new technologies in retirement plan administration. We support the adoption of the regulations proposed on July 14, 2005, but request one clarification of the proposal. As the Institute stated in its comments concerning the regulations issued in 2000,² Institute members have extensive experience in applying new technologies to the administration of and recordkeeping for retirement plans and other shareholder accounts. These technologies have allowed more cost-effective plan administration compared with traditional paper-based systems. The proposed regulations will provide needed clarification of the effect of the Electronic Signatures in Global and National Commerce Act (E-SIGN) on current rules established in the 2000 regulations. The Institute strongly supports the approach the Service takes in the proposal to the consumer consent requirement of E-SIGN – to provide an exemption to allow plans to continue using their existing procedures under the 2000 regulations issued under section 1510 of TRA '97. Regulations under that section are required to maintain the protection of the rights of participants and beneficiaries and thus meet the test that any exemption from the consumer

¹ The Investment Company Institute is the national association of the American investment company industry. Its members include 8,501 open-end investment companies (mutual funds), 662 closed-end investment companies, 144 exchange-traded funds, and 5 sponsors of unit investment trusts. Mutual fund members of the ICI have total assets of approximately \$8.370 trillion (representing more than 95 percent of all assets of US mutual funds); these funds serve approximately 87.7 million shareholders in more than 51.2 million households.

² Letter to Internal Revenue Service from Russell G. Galer, Senior Counsel, Investment Company Institute, dated March 18, 1999. Internal Revenue Service Page 2 of 3

October 12, 2005 consent requirements of E-SIGN not increase the material risk of harm to consumers. By allowing plans to use existing procedures, the proposal avoids imposing unnecessary costs on plans to establish new systems not needed to protect participants and creating confusion on the part of plan participants and beneficiaries.

Electronic Notarization of Spousal Consent The Institute supports the proposed provision to allow electronic notarization of spousal consent under Code section 417, provided that the individual's signature is witnessed in the physical presence of a plan representative or

notary public. This procedure would allow the use of paperless technology while maintaining the protection that the physical presence requirement provides for spouses of plan participants as well as plan officials (i.e., that the spouse is actually the person signing). The Service specifically requests comment on whether the regulations should include an exception to the physical presence requirement, and presents three options for commenters to consider. Institute members support the third option, which would grant the Commissioner discretion to allow, after notice and comment, a particular form of electronic notarization that does not require the spouse's presence. This option would allow the Service to develop an exception if technology advances to provide the same spousal protections as the physical presence requirement, while allowing interested parties to comment on the technology and mechanics of any future exception. Clarification Concerning Electronic IRA Distributions Institute members serve as payors under individual retirement accounts (IRAs) as well as retirement plans, and, accordingly, support similar use of technology in the IRA context. Under the guidance issued to date, IRA payors and payees can use electronic technology for the withholding notices and elections under section 3405 of the Code.³ The current proposal, however, does not address IRAs other than SEPs and SIMPLEs. This omission raises questions as to whether the Service intends that a separate set of rules would apply to regular IRAs. Such an approach could create confusion on the part of IRA owners, and necessitate costly systems changes. We therefore request that the Service establish consistent rules under section 3405 for regular IRAs, SEPs and SIMPLEs, and specifically clarify that the final regulations will not affect the current rules governing electronic IRA withholding notices and elections under section 3405. 3 Treas. Reg. § 35.3405-1; Announcement 99-6, 1999-1 C.B. 352; see Treas. Reg. § 31.3402(f)(5)-1. Internal Revenue Service Page 3 of 3 October 12, 2005 Please feel free to contact me at (202) 326-5826 if we can provide any further information concerning these issues. Sincerely, /s/ Mary S. Podesta Mary S. Podesta Senior Counsel – Pension Regulation

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