

IRS PROPOSES REGULATIONS FOR PARTICIPANT NOTICES OF CONSEQUENCES OF DEFERRAL OF RETIREMENT DISTRIBUTIONS

Retirement plans that are subject to ERISA are not permitted to distribute benefits without a participant's consent if (1) the total value of the participant's vested benefit exceeds \$5,000 and (2) the participant has not yet reached normal retirement age (or age 62, if later). A participant's consent to an immediate distribution is valid only if the participant receives a written notice describing the available forms of distribution and the right to defer receipt of the distribution. The Pension Protection Act of 2006 added a requirement, effective beginning in 2007, that this notice also describe the consequences of failing to defer receipt of the distribution. The IRS issued guidance early in 2007 that provided a safe harbor for satisfying this new notice requirement. Under the safe harbor, relatively little new information needed to be added to participant notices.

The Service has now proposed regulations that would add significantly more new information to these notices. The regulations are proposed to be effective beginning in 2010, but not earlier than 90 days after they are finalized. Until then, plan administrators can continue to rely on the 2007 guidance. Thus, assuming participant notices have already been revised to comply with that guidance, they need not be revised again before 2010.

Under the proposed regulations, participant notices would have to include the following information and, in each case, explain why it is relevant to a decision whether to defer:

- The federal tax consequences for failing to defer, including (i) consequences attributable to the timing of inclusion in taxable income (e.g., the tax treatment of Roth contributions and earnings distributed immediately or deferred until they qualify for tax exemption); (ii) application of the 10% additional tax on early distributions; and (iii) in the case of defined contribution plans, loss of tax deferral on future earnings.
- In the case of a defined benefit plan, a statement of the amount payable immediately and at normal retirement age in the form a single life annuity or qualified joint and survivor annuity.
- In the case of a defined contribution plan, a statement that some investment options available under the plan may not be generally available on similar terms outside the plan, and contact information to obtain additional information about the availability of such investment options outside the plan.
- In the case of a defined contribution plan, a statement that investment related fees and expenses outside the plan may differ from fees and expenses under the plan, and contact information to obtain additional information about fees and expenses under the plan.
- An explanation of any provisions of the plan or of any accident or health care plan that could reasonably be expected to materially affect a decision whether to defer receipt of the distribution. The proposed regulation cites as examples plan provisions under which the failure to defer could cause (i) loss of eligibility for retiree health care coverage, early retirement subsidies or social security supplements; (ii) an adverse effect on benefits of a

rehired participant; and (iii) in the case of a defined contribution plan, receipt of vested benefits that, if undistributed at the time of the participant's death, would be forfeited.

If you have questions or would like additional information about the new participant notice requirements, please feel free to contact Brian Dougherty at 215-587-5919 or bdougherty@postschell.com.

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