

PART III - Administrative, Procedural, and Miscellaneous

New Technologies in Retirement Plan Administration

Notice 99-1

This notice provides guidance to sponsors and administrators of retirement plans that are intended to be qualified under section 401(a) of the Internal Revenue Code regarding the use of electronic media for conducting certain transactions involving plan participants and beneficiaries.

USE OF ELECTRONIC MEDIA

The administration of a qualified plan involves a variety of transactions between the plan and plan participants and beneficiaries for which the Code and the Income Tax Regulations do not set forth rules or standards regarding the media through which such transactions may be conducted. Such transactions include (but are not necessarily limited to) enrolling in the plan, designating rates of elective and after-tax contributions, designating beneficiaries (other than designations requiring spousal consent), electing direct rollovers, electing investment allocations for future contributions, changing investment allocations for amounts held under the plan, inquiring about general plan information (such as investment options and distribution options), and inquiring about account information (such as current account balances and current investment allocations).

As a result of developments in electronic technologies, a variety of electronic media (such as e-mail, the Internet, intranet systems, and automated telephone systems) are now available for many plan transactions such as those described above.

LAW AND ANALYSIS

Section 401(a), the regulations, and other guidance of general applicability thereunder set forth the requirements pursuant to which a trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of the employer's employees or their beneficiaries will constitute a qualified trust.

Section 401(k), the regulations, and other guidance of general applicability thereunder set forth the requirements that a cash or deferred arrangement must satisfy in order to be a qualified cash or deferred arrangement.

Section 7805(d) provides that, except to the extent otherwise provided by Title 26 of the United States Code, any election under Title 26 shall be made at such time and in such manner as the Secretary shall prescribe.

Revenue Procedure 98-25, 1998-11 I.R.B. 7, specifies the basic requirements that the Service considers to be essential in cases where a taxpayer's records are maintained within Automated Data Processing systems. Section 3.01(1) of Rev. Proc. 98-25 provides that the requirements of the revenue procedure apply to employee plans.

Rev. Proc. 97-22, 1997-1 C.B. 652, provides guidance to taxpayers maintaining books and records by using an electronic storage system that either images their hardcopy (paper) books and records, or transfers their computerized books and records, to an electronic storage medium, such as an optical disk. Section 3.02 of Rev. Proc. 97-22 provides that the requirements of the revenue procedure apply to employee plans.

No provision of § 401(a), the regulations, or other published guidance thereunder requires that participant enrollments, contribution elections, beneficiary designations (other than designations requiring spousal consent), direct rollover elections, or the other transactions

described above be conducted through written paper documents, or prohibits conducting such transactions through electronic media. Similarly, no provision of § 401(k), the regulations, or other published guidance thereunder requires a cash or deferred election to be made through written paper documents or prohibits making such an election through electronic media.

Therefore, a plan does not fail to meet the requirements of § 401(a) merely because it permits a participant or beneficiary to use electronic media for such transactions, and an arrangement does not fail to be a qualified cash or deferred arrangement under § 401(k) merely because a participant may make cash or deferred elections through electronic media.

This notice does not address the use of electronic media for any transaction for which a specific provision of the Code, the regulations, or other guidance of general applicability sets forth rules or standards regarding the media through which such transaction may be conducted (*e.g.*, § 402(f)). Proposed regulations are being issued to address the use of electronic media for certain notices and consents required under §§ 402(f), 411(a)(11), and 3405.

Additionally, this notice does not address the application of Title I of ERISA to the use of electronic media for any transactions involving plan participants and beneficiaries.

DRAFTING INFORMATION

The principal authors of this notice are Catherine Livingston Fernandez of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations) and Daniel S. Evans of the Employee Plans Division. For further information regarding this notice, contact the Employee Plans Division's telephone assistance service between 1:30 and 4:00 p.m., Eastern Time, Monday through Thursday at (202) 622-6074/75, or Ms. Hernandez at (202) 622-6030. (These telephone numbers are not toll-free).