
Pending Finalization of Proposed Regulations Regarding Timing Requirements for Satisfying Notice and Consent Requirements Under Sections 411 and 417 of the Code

Announcement 98-87

The Internal Revenue Service and the Department of the Treasury intend to take into account public comments that are currently being received regarding the use of new technologies (sometimes referred to as “paperless” technologies) in the administration of qualified plans when amending and finalizing proposed regulations relating to notice and consent requirements under sections 411(a)(11) and 417 of the Internal Revenue Code (the “Code”). The Service and Treasury intend to finalize these regulations in the near future. In the meanwhile, plan sponsors may continue to rely on these regulations as proposed.

Background

A notice of proposed rulemaking (EE-24-93) containing proposed amendments to the Income Tax Regulations under sections 411(a)(11) and 417 of the Code (that would amend section 1.411(a)-11(c)(2) and (8) and section 1.417(e)-1(b)(3) and (4)) was published in the **Federal Register** (60 F.R. 49236) on September 22, 1995. Temporary Income Tax Regulations (T.D. 8620) under sections 411(a)(11) and 417 (section 1.411(a)-11T(c)(2) and (8) and section 1.417(e)-1T(b)(3) and (4)) were published on the same day (60 F.R. 49218). The text of the proposed regulations and temporary regulations is the same. Under section 7805(e), temporary regulations expire within three years after issuance.

The proposed and temporary regulations set forth rules concerning the timing requirements for satisfying the notice and consent requirements under sections 411(a)(11) and 417 of the Code in connection with distributions from qualified plans. The regulations did not provide guidance on the use of paperless tech-

nologies, although the preamble to the regulations invited comments on possible modifications to the notice and consent requirements to accommodate paperless technologies, if adequate safeguards are provided.

Section 1510 of the Taxpayer Relief Act of 1997, Pub. L. 105-34, provides that the Secretary of the Treasury and the Secretary of Labor each shall issue guidance designed to interpret the notice, election, consent, disclosure, and time requirements (and related recordkeeping requirements) under the Code and the Employee Retirement Income Security Act of 1974 relating to retirement plans as applied to the use of new technologies by plan sponsors and administrators. Section 1510 requires the guidance to maintain the protection of the rights of participants and beneficiaries. Announcement 98-62, 1998-29 I.R.B. 13, requested public comments, by October 5, 1998, on the use of paperless technologies and, among other issues, the application of these technologies to the notice and consent requirements under sections 411(a)(11) and 417.

Reliance on Proposed Regulations

The Service and Treasury plan to issue amended and final regulations relating to the timing requirements for satisfying the notice and consent requirements under sections 411(a)(11) and 417 of the Code only after careful consideration of the public comments on paperless technologies received by October 5, 1998. Accordingly, it is intended that the temporary regulations under sections 411(a)(11) and 417 (section 1.411(a)-11T(c)(2) and (8) and section 1.417(e)-1T(b)(3) and (4)) will not be finalized prior to their automatic expiration under section 7805(e). Pursuant to this announcement, plan sponsors may rely on the proposed regulations under sections 411(a)(11) and 417 (that would amend section 1.411(a)-11(c)(2) and (8) and section 1.417(e)-1(b)(3) and (4)) until the proposed regulations are amended or finalized.