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ASPPA Comments on Notice of Consequences of Failing to Defer Receipt of Distribution

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Submitted to the Internal Revenue Service

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The American Society of Pension Professionals & Actuaries (ASPPA) appreciates this opportunity to comment on the Proposed Regulations regarding the Notice to Participants of Consequences of Failing to Defer Receipt of Qualified Retirement Plan Distributions.

ASPPA is a national organization of more than 6,500 members who provide consulting and administrative services for qualified retirement plans covering millions of American workers. ASPPA members are retirement professionals of all disciplines, including consultants, investment professionals, administrators, actuaries, accountants and attorneys. Our large and broad-based membership gives ASPPA a unique insight into current practical applications of ERISA and qualified retirement plans, with a particular focus on the issues faced by small- to medium-sized employers. ASPPA's membership is diverse but united by a common dedication to the employer-sponsored retirement plan system.

Summary of Recommendations

- A. The final Regulations should provide that delivery of the Internal Revenue Code (IRC) §402(f) notice satisfies the requirement that a participant be provided with a description of federal tax implications for failing to defer receipt of a distribution.
- B. The requirement to provide a contact for obtaining additional information on the general availability outside the plan of currently-available investment funds in the plan should be limited to disclosure of the Web site and/or toll-free number of the plan's current investment or other service provider.
- C. The final Regulations should provide that simultaneous delivery of any notices required under IRC §§402(f), §411(a)(11) or 417 (QJSA) or distribution consent notices would constitute a single notice, thereby eliminating the need for cross-references.

- D. The final Regulations should provide rules for defining the existence of a “subsidy” (that is, define the neutral ground that would not be viewed as a subsidy to form the basis for comparison) and quantify the differential that would cross over the line of “materiality.” Alternatively, the final rule should simply provide that the disclosure of the immediate benefit, the deferred benefit at normal retirement age (NRA) and the deferred benefit at the age at which the benefit is most valuable, with associated relative values, will be sufficient disclosure of the impact of early retirement subsidies.

Discussion of Issues

A. Coordination with IRC §402(f) Notice

Under Proposed Reg. Section §1.411(a)-11(c)(2)(vi)(A)(1), a participant must be provided information that explains, among other things, the direct rollover rules and the tax treatment of distributions not rolled over. IRC §402(f) requires the plan administrator of a plan qualified under IRC §401(a), an IRC §403(a) annuity plan, an IRC §403(b) tax-sheltered annuity or an eligible IRC §457(b) plan to provide a written explanation to the recipient of an eligible rollover distribution. The IRC §402(f) notice is intended to provide information sufficient for a participant to be informed about the federal tax implications associated with the decision to elect a current distribution from a plan. Information required under the Proposed Regulation is consistent with the communication already provided in the IRC §402(f) notice and therefore should meet the requirements of the new law. Participants are already provided with too many separate notices that, in many cases, provide redundant information. Reducing the size and redundancy of notices would increase the likelihood that notices would provide meaningful information.

ASPPA recommends that the final Regulations provide that delivery of the IRC §402(f) notice satisfy the requirement that a participant be notified of the direct rollover rules and the tax treatment of distributions not rolled over.

B. Contact Information for Investments

Under Proposed Reg. Section §1.411(a)-11(c)(2)(vi)(A)(3), the notice would include a statement, if applicable, that some investment options currently available in the plan may not be available on similar terms outside of the plan. In addition, the notice must provide contact information to obtain additional information on the availability of investments outside the plan. Participant-directed defined contribution plans generally allow participants to access current account information, fund prospectus and other investment education materials through Web sites and voice response units (VRU) maintained by the investment or other service provider; therefore, these outlets are better positioned to respond to participant inquiries regarding investment options. Plan administrators and advisors should have no duty to research and/or discuss funds that are not offered by the plan.

ASPPA recommends that the final Regulations clarify that the requirement to provide a contact for obtaining additional information on availability of plan investment options that may be available outside of the plan should be limited to disclosure of the Web site and/or toll-free number of the plan’s current investment or other service provider.

C. Simultaneous Delivery with other Notices

Under Proposed Reg. Section §1.411(a)-11(c)(2)(vi)(B), all the information regarding the consequences of a participant’s failing to defer receipt of a distribution must appear together; however, the proposal allows for a cross-reference to other notices or information available to the participant. In most cases, participants are provided, at the time of a distributable event, with numerous notices such as notices required under IRC §402(f), 411(a)(11) and 417 (QJSA). If the plan administrator forwards such notices to a participant in a single “distribution package” at the time a participant is eligible to request his or her benefit payment, then requiring that the information regarding the consequences of failing to cross-reference other documents is redundant and would complicate the communication process.

ASPPA recommends that a single distribution package which incorporates other notices, such as those required by IRC §§ 402(f), 411(a)(11) or 417 (QJSA), would constitute a single notice for purposes of the final Regulations, thereby eliminating the need to cross-reference other documents.

D. Defined Benefit Plan Notice Content

Proposed Reg. Section §1.411(a)-11(c)(2)(vi)(A)(5) requires additional disclosures of *provisions of the plan that could reasonably be expected to materially affect a participant's decision whether to defer receipt of the distribution*. The paragraph notes that eligibility for early retirement subsidies is a plan provision which might need to be disclosed. The types and amounts of benefit reduction approaches for early commencement are as varied as the types of benefit formulas being used. The Proposed Regulation gives no guidance as to how the Plan Administrator can determine if a particular plan provision offers a “subsidy” at all, or whether that subsidy is large enough to cross a threshold that would be expected to materially affect a participant’s decision.

ASPPA recommends that the final Regulations provide rules for defining the existence of a “subsidy” (that is, define the neutral ground that would not be viewed as a subsidy to form the basis for comparison) and quantify the differential that would cross over the line of “materiality.” Alternatively, the final rule should simply provide that the disclosure of the immediate benefit, the deferred benefit at NRA and the deferred benefit at the age at which the benefit is most valuable, with associated relative values, will be sufficient disclosure of the impact of early retirement subsidies.



These comments were prepared by the ASPPA Reporting and Disclosure Subcommittee of the Government Affairs Committee, Francine L. Jacoby, Chair. Please contact us if you have any comments or questions regarding the matters discussed above. Thank you for your consideration.

Sincerely,

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