

PENSION RIGHTS CENTER

1350 CONNECTICUT AVENUE, NW, SUITE 206 WASHINGTON, DC 20036-1739
TEL: 202-296-3776 FAX: 202-833-2472
WWW.PENSIONRIGHTS.ORG

February 6, 2008

CC:PA:LPD:PR (REG- 133300-07)
Room 5203
Internal Revenue Service
PO Box 7604
Ben Franklin Station
Washington, D.C. 20044

Re: Comments on Automatic Contribution Arrangements Proposed Regulations

We are submitting comments on the Internal Revenue Service's proposed regulations on automatic contribution arrangements under sections 401(k)(13) and 414(w) of the Internal Revenue Code. The Pension Rights Center is a nonprofit consumer organization that has been working since 1976 to promote and protect the retirement security of American workers and their families.

Automatic contribution arrangements (or automatic enrollment) are a means of facilitating retirement savings for employees. Automatic enrollment has increased employee participation in employer sponsored retirement savings plans. However, some employees, particularly those with lower incomes, cannot afford monthly salary deferrals that reduce their take-home pay. These lower income workers often struggle just to make ends meet and therefore must be afforded the greatest protection under the final regulations. Our comments reflect our concerns over the content of required notices and delivery of notices to participants as well as the fees that may be charged to participants withdrawing their automatic contributions.

Notice

Without adequate notice workers may not realize they have an option to elect out of participation in the plan or, if the plan so provides, withdraw their contributions without paying penalty taxes. Therefore, the information in the notice must be clear and understandable and fully inform workers of their rights as automatically enrolled participants.

Plans must provide notice within a reasonable period of time before the first elective contribution is made. The proposed rule permits notice as late as the first day of employment even when the plan provides for immediate eligibility. In this circumstance we recommend that the Service develop a "**Required Standard Notice**" to be given to new hires who are immediately eligible for participation in the plan. A Required Standard Notice rather than a model notice would provide plans with mandatory language ensuring that new hires receive all of the necessary information in an understandable manner. We believe a Required Standard Notice is necessary in these circumstances given that employers may immediately enroll new hires in the plan, the opportunity to elect out is brief and, if there is a period for withdrawing contributions without penalty under section 414(w), it will only be for 90 days.

The language prescribed in the final regulations should reflect the importance of the information contained within the notice and clearly inform new employees of their options to elect out of participation, elect a different amount of contribution, and, if applicable, timely withdraw automatic contributions without penalty. This standard notice will be particularly important to low and moderate income workers whose economic circumstances will compel them to elect out of participation and withdraw the contributions. Without adequate notice, an arrangement aimed at increasing their economic well-being could actually cause them to lose much-needed earnings. The notice could be presented along with other required information such as the plan's notice of investment alternatives under the automatic contribution arrangement.

Notice Delivery

The form of delivery used for notification is vital to ensure that all participants receive the notice in a manner that will ensure the notice will be read. For the protection of participants, the regulation should specify the form of delivery and not leave it to the plan administrator to make that determination. The default form of delivery should be a written paper notice hand delivered or mailed. We recommend that notice by electronic means only be permitted when the participant agrees to receive such notice in advance. Thus, electronic delivery generally would not apply to new hires. When the form of delivery is electronic, a paper copy should be provided upon request. We also recommend that the Service specify that voice mail delivery is never appropriate for notices under automatic contribution arrangements.

Fees


The option to withdraw automatic contributions under section 414(w) permits employers to allow employees who decide they cannot afford to contribute to the plan to retrieve the money that was withheld on their behalf. The usual IRS 10% penalty on distributions does not apply to these withdrawals. We are concerned that the proposed regulation does not clearly address the imposition of transfer fees and distribution fees imposed by the investment product. We recommend that the final regulation clarify that such fees directly related to the withdrawal or transfer of funds cannot be imposed on money withdrawn under the provisions of section 414(w). This would correspond to the Department of Labor's rule on fees in qualified default investment alternatives (29 CFR §2550.404c-5).

The Pension Rights Center appreciates this opportunity to comment on these proposed regulations for automatic contribution arrangements.

Sincerely,



Jane Smith
Participant Inquiries Specialist



Rebecca Davis
Staff Attorney