



AMERICAN BENEFITS  
COUNCIL

January 7, 2009

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CC:PA:LPD: PR (Reg-107318-08)  
Room 5203  
Internal Revenue Service  
PO Box 7604  
Ben Franklin Station  
Washington, DC 20044

**Re: Comment on proposed regulations on notice of right to defer receipt of distribution under sections 402(f), 411(a)(11) and 417**

Dear Sir or Madam:

The American Benefits Council (Council) appreciates the opportunity to comment on the proposed regulations concerning the notice of right to defer receipt of an immediately distributable benefit and the applicable election period under sections 402(f), 411(a)(11) and 417 of the Internal Revenue Code (Code). The Council is a public policy organization representing principally Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees. Collectively, the Council's members either sponsor directly or provide services to retirement and health plans that cover more than 100 million Americans.

The Council would like to commend the Internal Revenue Service (Service) and the U.S. Treasury Department (Treasury) for proposing regulations that meet the Congressional requirement (from the Pension Protection Act) that "a description of a participant's right, if any, to defer receipt of a distribution shall also describe the consequences of failing to defer such receipt" while attempting to alleviate potential administrative difficulties. It is particularly helpful that the regulations allow the notice to provide a generic statement that the plan's investment options may not be generally available on similar terms outside the plan. However, the Council has a few recommendations of clarifications or changes to the proposed regulations that would ease administrative difficulties while facilitating the new notice requirements.

The disclosures that are the subject of the proposed regulations generally are prepared and distributed by outside service providers who may provide such disclosures for hundreds of plans. These generic disclosures are not customized to include specific plan information nor do they have information about other plans the employer may have. Such economies of scale have lessened the cost of providing such disclosures.

While the Council understands the need to provide relevant information to plan participants considering a pre-normal retirement age distribution, the Council believes it is possible to meet this need by including more generic information and references to outside documents, including summary plan descriptions, as well as directions to contact call centers for more information. For example, the proposed regulations require a plan to include information regarding any provision of a plan maintained by the employer that could reasonably be expected to materially affect a participant's decision to defer receipt. The notice could state that "your company may have accident, health or long-term disability benefits that may be effected if you fail to defer" and suggest that the participant review the health and/or disability plan summary plan descriptions. Alternatively, the generic statement could be followed by a direction to contact the call center or human resources for more information.

In order to mitigate costly administrative plan-specific activity, it would also be helpful if the final regulations could clarify that references to, for example, the loan provisions in the summary plan description (SPD), rather than the actual section or page number of the SPD would be sufficient. In addition, the final regulations should make clear that references to another document that is relatively short, such as the tax notice under 402(f), need not include section or page numbers.

In some cases, the information required under the proposed regulations would be difficult to boil down into a standard notice even if plan specific information is provided. For example, a plan sponsor has a long term disability (LTD) plan that pays 60 percent of pay (tax-free because premiums are taxed to participants) that is offset by any retirement benefits. The offset would appear to weigh in favor of deferral because the LTD will eventually end and the ongoing pension income would be higher in the future. But the participant could die while in deferral (which may be more likely for a disabled participant) and the spouse would receive a lesser survivor annuity than the participant could currently elect (or, in some cases, a term certain annuity). If the participant is unmarried, there likely would be no death benefit for the deferred benefit. A Council member with such an arrangement currently provides one-on-one counseling and each situation tends to be unique. The Council suggests that the final regulations clarify that it is the negative consequences of failing to defer that must be included in the notice, alleviating the need to describe the type of complicated interaction illustrated above in a notice intended to go to all participants. Again, a generic statement such as contained in the preceding paragraph could alert affected participants of the need to make further inquiry.

The clarification requested above (that the notice include only negative consequences of failing to defer) would also simplify other potential complications of the notice, such as the possibility of becoming vulnerable to funding-related benefit restrictions in the future. If the current benefit reflects an early retirement subsidy or social security supplement that may not be available later, that difference would be reflected in the respective dollar amounts shown.

Finally, the proposed regulations require contact information for obtaining additional information on the general availability outside the plan of currently available investment options in the plan. It may seem logical to direct participants to a call center to receive this type of information but the Council has some further concerns. Proprietary funds, company stock funds and comingled funds may not be available outside the plan but other investment options are more nuanced. For example, some investments may be available at institutional share class prices or with reduced or waived sales charges but call centers may not have all of the relevant information and plan sponsors may be uncomfortable with their service providers giving this type of information. The Council recommends that the final regulations allow generic references to call centers but allow call centers to refer plan participants to the providers of the investment options (i.e., providing phone numbers for fund families) for additional information.

Again, we appreciate the opportunity to comment on these notice issues and commend Treasury and the Service for its efforts to provide meaningful information to participants in a manner that does not greatly complicate administration. We believe the American Benefits Council offers an important and unique perspective of the employer sponsors of retirement plans and service providers to the plans and we would be please to make this perspective and additional information available to the Service and Treasury. If this would be helpful, please call me at 202-289-6700.

Sincerely,

A handwritten signature in black ink, appearing to read "Jan Jacobson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jan Jacobson  
Senior Counsel, Retirement Policy  
American Benefits Council