



MINUTES

Internal Revenue Service Advisory Council Public Meeting

September 22, 2021, 4 p.m. ET

The meeting was opened by John Lipold, Designated Federal Officer, Branch Chief, Communications and Liaison, IRS Office of National Public Liaison, who provided housekeeping information regarding the call. Mr. Lipold welcomed the public to the Internal Revenue Service Advisory Council's ("IRSAC") public work session briefing and noted that IRSAC's annual public meeting will be held on November 17, 2021. He indicated that the public can make comments at the close of the meeting, and that the IRSAC received one comment and request to speak. Mr. Lipold turned the meeting over to Ben Deneka, Chairman, IRSAC.

Mr. Deneka outlined the agenda for the meeting, described the history and purpose of IRSAC, and introduced IRSAC's leadership team. He noted that the committee is structured to include five subgroups: Large Business and International ("LB&I"), Small Business and Self-Employed ("SB/SE"), Tax Exempt and Government Entities ("TE/GE"), Wage and Investment ("W&I"), and Information Reporting. Mr. Deneka then facilitated an overview of the topics and corresponding recommendations that the IRSAC proposes to include in its annual report.

General Report Topics

1. Adequate Funding for IRS - Phil Poirier, Wage & Investment Subgroup Member
2. Independent Office of Appeals - Steve Klitzner, SBSE Subgroup Member
3. Postponing Deadlines Under Revenue Procedure 2018-58 with Regard to Information Return Filers, Ben Deneka, IRSAC Chair and Wage & Investment Subgroup Member
4. Implementation of the Taxpayer First Act Section 1302, Modernization of Internal Revenue Service Organizational Structure, Joe Novak, Large Business & International Subgroup Chair
5. Circular 230 Revisions, Kelly Myers, Small Business/Self-Employed Subgroup Member
6. Mr. Deneka indicated that one additional topic would be included in the General Report: Reduction in Electronic Filing Threshold for Information Return Files, authored by Wendy Walker, Information Reporting Subgroup Member. This topic and the recommendation were previously discussed in a prior public meeting.

Tax Exempt Government Entities Subgroup Topics

April Goff, TEGE Subgroup Chair

1. Consider researching/providing feedback on the thresholds associated with filing the 990-N notice and 990-EZ return
2. Reduction of Private Letter Ruling Fee Applicable for Tax Advantaged Bonds for Government Issuers
3. Update, expand and promote online IRS guidance for public sector/governmental entities

Information Reporting Report Topics

Alexandra Cruz, Information Reporting Subgroup Chair

1. Payors of Income Related to Digital Assets Need Information Reporting & Withholding Guidance
2. Foreign Student Social Security and Medicare Exemptions
3. Section 1446(f): Withholding on Transfers of Interests in Publicly Traded Partnerships
4. Negative Rates

Large Business and International Report Topics

Joseph Novak, LB&I Subgroup Chair

1. Consider Reasonable Cause Prior to Assessing Penalties on International Information Reporting Forms
2. Continuation of Rev. Proc. 94-69
3. Protecting the Personal Identifiable Information of Responsible Parties
4. Ensuring the Timely Issuance of Certificate of Residency Forms

Small Business Self Employed Subgroup Topics

Bob Panoff, SBSE Subgroup Chair

1. IRS Covid-19 Response
2. The Compliance Effort Around Abusive Promoters and Preparers

Wage & Investment Subgroup Topics

Martin Armstrong, W&I Subgroup Chair

1. Review of Paid Preparer Due Diligence Training Module
2. Publication 535
3. Publication 938
4. Increase Electronic Filing
5. Improving the Taxpayer Experience with the Taxpayer Digital Communication – Outbound Notification (TDC-ON) Application

None opposed any of the proposed topics or recommendations, and Mr. Deneka indicated that this was the comprehensive list of topics to be included in the IRSAC's annual report.

Mr. Deneka thanked attendees for participating and thanked the IRS for the support that has been provided as IRSAC does its work. Mr. Deneka turned the meeting back to Mr. Lipold.

One member of the public requested to speak regarding electronic delivery rules for retirement-related disclosures and remote notarization permissibility.

There being no further business to come before the committee, Mr. Lipold ended the meeting at 4:58 p.m. ET.

IRSAC Public Meeting Attendees – September 22, 2021

IRSAC

Ben Deneka, IRSAC Chair	Kelly Myers
Carol Lew, IRSAC Vice Chair	Joseph Novak
Ted Afield	Robert Panoff
Martin Armstrong	Charles Parr
Sharon Brown	Phil Poirier
Jeremiah Coder	Seth Poloner
Alexandra Cruz	Nancy Ruoff
Deborah Fox	Paul Sterbenz
April Goff	Katie Sunderland
Antonio Gonzalez	Kathryn Tracy
Robert Howren	Kevin Valuet
Denise Jackson	Katrina Welch
Jodi Kessler	Daniel Welytok
Steve Klitzner	Mary Jo Werner
Kathleen Lach	

IRS

John Lipold, IRSAC DFO
Johnnie Beale
Anna Brown
Stephanie Burch
Bruce Friedland
Maria Jaramillo
Pam Marlowe
Peggy Martin
Nancy Rose
Brian Ward
Victoria White

Public attendees

Lisa Adams, Lehigh Hanson
Bill Dunn, Bloomberg Tax & Accounting
Emmanuel Elone
Phyllis Jo Kubey, New York State Society of Enrolled Agents
Jyme Mariani, American Payroll Association
Adam McMahon, Davis-Harman
William Norden
Prasanthi Paritala, Davis-Harman
Jazlyn Williams, Bloomberg Tax & Accounting

**MEETING OF
THE INTERNAL REVENUE SERVICE ADVISORY COUNCIL
SEPTEMBER 22, 2021**

Statement of Adam McMahon on behalf of the SPARK Institute, Inc.

Thank you for the opportunity to speak with the Internal Revenue Service Advisory Council (“the Council”) today. My name is Adam McMahon and I am providing comments on behalf of the SPARK Institute, a member-driven trade association for the retirement savings industry. I am an attorney with the law firm of Davis & Harman, which serves as government relations counsel for the SPARK Institute.

The SPARK Institute represents the interests of a broad-based cross section of retirement plan service providers and investment managers, including banks, mutual fund companies, insurance companies, third party administrators, trade clearing firms, and benefits consultants. Collectively, SPARK Institute members serve approximately 95 million employer-sponsored plan participants.

In my comments before the Council this afternoon, I will discuss two issues that the Council should pursue in an effort to help reduce the costs and administrative burdens that are associated with maintaining employer-sponsored retirement plans and individual retirement arrangements (“IRAs”). By utilizing existing electronic technologies in the ways that I will discuss, the SPARK Institute believes that future guidance on these matters would result in reduced costs for retirement savers and greater financial security for Americans.

1. UPDATED ELECTRONIC DELIVERY STANDARDS FOR NOTICES AND DISCLOSURES

The first issue that I will discuss this afternoon is the need for updated electronic delivery standards for the various notices and disclosures that must be routinely furnished to retirement plan participants and IRA owners pursuant to the Internal Revenue Code (“Code”). For example, these disclosures include information about participants’ rights under their workplace 401(k) plans and the tax treatment of distributions received from such plans. The SPARK Institute strongly supports the expanded use of electronic media to deliver these documents and we believe that the expanded use of electronic delivery would make these disclosures more effective, more useful, and less costly for retirement savers.

Existing regulations from the Department of the Treasury (“Treasury”) and Internal Revenue Service (“IRS”) permit these documents to be electronically delivered to retirement plan participants and IRA owners, instead of in paper, if certain regulatory conditions are satisfied. These regulations are commonly referred to as the “IRS E-Delivery Rules.” *See* Treasury Regulation section 1.401(a)-21. These existing rules, which were issued shortly after the passage of the federal E-SIGN Act, worked well for many years, but they have not been updated since 2006. Since 2006, we have seen an explosion of the use of electronic media for financial transactions and a steady growth in the public’s comfort with electronic media across all ages.

Far more recently, in 2020, the Department of Labor (“DOL”) finalized regulations recognizing two new regulatory safe harbors for electronically delivering notices and disclosures that are required by the Employee Retirement Income Security Act (“ERISA”) for many of these same retirement plan participants. These new safe harbors allow electronic delivery to be the default method for document delivery and appropriately recognize the increased use of, and access to, electronic media by Americans who participate in workplace retirement plans. Additionally, DOL’s new rules include important safeguards to protect retirement savers who prefer to receive their disclosures in paper form. For example, the new DOL rules may only be used if the sender first furnishes a one-time paper notice to any individual who will receive documents electronically. At all times, participants must also be permitted to request all relevant documents in paper at no charge.

Many of the regulatory conditions included in DOL’s new rules overlap, or closely align, with the regulatory conditions described in the IRS E-Delivery Rules. However, notwithstanding this substantial overlap, Treasury and IRS have not indicated the extent to which documents delivered in accordance with DOL’s new standards will satisfy the conditions described in the IRS E-Delivery Rules.

The SPARK Institute was very pleased to see that, in connection with the new DOL rules, Treasury and IRS indicated that they intend to issue additional guidance relating to the use of electronic delivery for participant notices. We were also further pleased to see that, on their 2021-2022 priority guidance plan, the Treasury Department and IRS included a new project to update the electronic delivery rules that apply when Code-required notices are provided to retirement plan participants and IRA owners. We understand that this recently announced project is intended to follow-up on DOL’s update of its own electronic delivery rules.

Recommendation #1: It is with this backdrop that the SPARK Institute makes the following recommendation to the Council this afternoon.

In an effort to promote harmonization across regulatory regimes, lower plan administration costs, and improve overall efficiency, the SPARK Institute asks that the Council include in its next report a recommendation for Treasury and IRS to: (1) without delay, proceed with their recently announced project to update the electronic delivery rules for retirement-related disclosures; and (2) issue guidance indicating that notices and disclosures delivered in accordance with DOL’s recently finalized safe harbors will satisfy the IRS’s electronic delivery standards for furnishing notices and disclosures to retirement plan participants and IRA owners.

2. PERMANENTLY PERMIT REMOTE NOTARIZATION

The second issue that I will discuss this afternoon is the need for a permanent extension of the temporary rules that have already been provided by the IRS with regard to the electronic notarization rules that apply when participants make certain elections under their retirement plans. Before discussing the specific guidance that we are seeking, please let me briefly explain the issue.

The Internal Revenue Code plays an essential role in encouraging Americans, and their employers, to build private retirement savings. Most significantly, if certain conditions are satisfied, the Code offers tax preferences to retirement savings plans and their participants.

One of these conditions is an important protection for the spouses of certain retirement plan participants. These are commonly known as the “spousal consent rules.” *See* Code section 417. Under these rules, before a married retirement plan participant is permitted to make certain elections with respect to his or her retirement benefits, the participant must first obtain the written consent of his or her spouse, and that consent must be witnessed by a notary public or plan representative. This type of spousal consent is needed, for example: (1) when a married participant changes his or her beneficiary to someone other than a spouse; and (2) when a married participant requests a distribution of retirement benefits from a pension plan in any form other than as a joint and survivor annuity.

Under existing IRS regulations, a spouse can provide this type of consent electronically and a notary can provide electronic notarization. However, when electronic media is used for these purposes, current IRS regulations require any spousal consent to be “witnessed in the physical presence of a plan representative or a notary.” *See* Treasury Regulation section 1.401(a)-21(d)(6). In 2006, when the rules were promulgated, it was not common for states to allow for “remote” notarization, although this is much more common today as technology has advanced. Remote notarization became critical during the pandemic for a variety of situations in which a notarization is required. For the administration of retirement plans, over the past year, the “physical presence” requirement has become impractical because the ongoing pandemic has created significant health risks for in-person transactions.

In response to these challenges, through IRS Notice 2020-42, the IRS granted temporary relief from the “physical presence” requirement for spousal consents that are witnessed through a video and audio communication system that satisfies a series of safeguards prescribed by the IRS, including relief for any remote notarization that is treated as valid under state law. This relief does not remove the general requirements for spousal consent and third-party witnessing. Instead, it merely provides relief from the “physical presence” requirement when a remote notarization process provides a reasonable substitute. In June 2021, the IRS provided an extension of this temporary relief through June 30, 2022.

Nearly all states currently allow for remote notarization in some form and we expect most states will make this procedure permanently available after the pandemic ends. Remote notarization procedures for spousal consents have been widely adopted by retirement plan sponsors and their service providers. They offer a more convenient and efficient alternative to physical witnessing and offer spouses the same, if not more, protections than physical witnessing.

Recommendation #2: In order to build on the successful implementation of the remote notarization systems developed in 2020, the SPARK Institute asks that the Council include in its next report a recommendation for Treasury and IRS to publish guidance that would make permanent the remote notarization rules described in Notice 2020-42, as subsequently extended by Notice 2021-03 and Notice 2021-40. These systems are already in place, have worked well during the pandemic, and should be available as an alternative

indefinitely. Furthermore, permanent relief from the physical presence requirement would not require a regulatory amendment. Instead, according to the current IRS regulations controlling electronic notarizations, the IRS can provide relief from the physical presence requirement by announcing substitute procedures in the Internal Revenue Bulletin. See Treasury Regulations section 1.401(a)-21(d)(6)(iii).