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Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5669
U.S. Department of Labor
200 Constitution Avenue, NW.
Washington, DC 20210

Attention: Automatic Rollover Regulation

We are writing concerning the Department of Labor (the "Department") proposed regulation governing the automatic rollover safe harbor. This proposed regulation was published on March 2, 2004 in 69 Fed. Reg. 9900.

Who We Are
Hewitt Associates consults on and assists in the administration of our clients' employee benefit plans, which cover more than 17 million participants. As such, Hewitt Associates is one of the largest retirement plan administrators in the country and has a significant amount of experience in the administration of benefits under the terms of ERISA.

Request for Clarification
We are submitting comments that merit consideration by the Department in the process of finalizing the proposed regulation. We believe the requested clarifications in this comment letter would assist both plan administrators and individual retirement plan providers in complying with the safe harbor once it is finalized.

First, we ask for clarification regarding the fourth condition of the safe harbor, which indicates that fees and expenses attendant to the individual retirement plan may be charged against only the income earned by the individual retirement plan. We believe the frequency in which earnings may be assessed will impact the amount of fees and expenses that may properly be charged. For example, if the frequency of the earnings assessment is monthly, such duration may result in a greater amount of fees chargeable than if the frequency were annually (if the investment performance fluctuated monthly but remained flat at the end of the year). We ask for guidance with respect to the permitted frequencies in which earnings may be assessed by individual retirement plan providers.

Second, we ask that the final regulation clarify whether income earned in one period may be charged against in a subsequent period, or whether such earnings become principal, which may not be charged against.

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Third, we request clarification regarding the circumstances, if any, in which an individual retirement plan provider may modify the terms of the individual retirement plan after the automatic rollover is completed. If such modifications may occur, we request guidance regarding what fiduciary duties remain, if any, once an automatic rollover has been completed.

For example, if an individual retirement plan provider subsequently changes the fee and expense provisions of the individual retirement plan so that they no longer satisfy the fourth condition of the safe harbor, does the plan sponsor have a fiduciary duty to move the account balance to a provider that does satisfy the fee and expense restrictions? We believe that a plan sponsor's fiduciary duties should cease at the time the automatic rollover is completed, and that the final regulation should clarify this point.

Finally, for purposes of satisfying the conditions of the proposed safe harbor, may a plan sponsor rely on a representation from an individual retirement plan provider that such provider intends to comply with the conditions (specifically, the second, third, and fourth conditions) of the safe harbor? For example, it would seem reasonable for a plan sponsor to rely on a provider's certification that fees and expenses will be charged only against income earned, rather than engage in its own due diligence to reach the same conclusion. We believe that a plan sponsor's reliance on such representations should be permissible, and that the final regulation should be modified accordingly.

Conclusion
We believe the proposed regulation gives rise to a number of issues that require clarification, and that plan sponsors and individual retirement plan providers will better be able to satisfy the conditions of the safe harbor with such clarification.

We hope that you will address the issues noted above in the final regulation.

If you have any questions or comments, please contact the undersigned at the telephone number or electronic mail address provided below.

Sincerely,
Hewitt Associates LLC

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Sent via email attachment to e-ORI@dol.gov