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April 1, 2004

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

Re: Automatic Rollover Regulation

To Whom It May Concern:

We appreciate this opportunity to provide comments about proposed regulations implementing section 657(c) of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). This provision calls on the Department of Labor to develop safe harbors relating to the automatic rollovers of certain tax-qualified plan distributions to individual retirement accounts (IRAs). As part of EGTRRA, the Internal Revenue Code was amended to require that when a participant makes no election when leaving employment and has a plan account between $1,000 and $5,000 that the default action would be to transfer that money directly to an individual retirement plan.

The American Bankers Association is the largest banking trade association in the country bringing together all elements of the banking community, including community, regional, money center banks and holding companies, as well as savings associations, trust companies and savings banks. Many of these institutions provide trust or custody services to institutional clients, including employee benefit plans covered by ERISA, as well as services to individuals in IRAs.

We commend the Department for addressing many of the concerns we raised in our previous letter to the Department about these accounts. We especially appreciate your work with the Department of the Treasury to clarify the intersection of this proposal with the USA Patriot Act. The guidance issued by the Department of Treasury as part of the FAQs makes it clear that a person is not deemed to have opened an account in these situations until that former plan participant contacts the bank.

There are some remaining concerns with the proposed regulation that we would like to raise here.

Fees

The proposed regulation includes a safe harbor provision that would require that fees and expenses not exceed those charged for a comparable account, as well as a requirement that fees and expenses only be charged against the income earned with the exception of charges assessed to establish the account.

Banks are concerned that the limitation proposed on charging fees against the account will lead to these accounts needing to be subsidized by the IRA custodian, and, in effect, by other individual retirement account holders.

In maintaining these accounts, custodians will need to provide certain accounting and recordkeeping for these accounts. In addition, the custodian may need to undertake certain activities for calculating required minimum distributions, or for locating the missing participant, or possibly his/her beneficiary. These activities all have costs associated with them.

In our previous comments, we noted the particular additional costs that might be associated with these accounts, including the fact that the institution will not have a signature on file, nor necessarily a current address, phone number or beneficiary designation. Further, because these accounts are likely to be inactive, there is little possibility of additional deposits to help offset the costs. As a result, we felt that it would be appropriate - indeed necessary - to be able to charge for these services.

We understand that the Department has proposed that these accounts should be charged the same fees as those charged for a comparable individual retirement account. While we believe this will not allow an institution to recoup its costs, we understand the Department's rationale for proposing this.

We do, however, have great difficulty with the second point made in the proposal – that fees and expenses can only be charged against income. In the current interest rate environment, particularly, such a limit is overly restrictive. No other IRA holder has that guarantee – i.e. the guarantee that fees and expenses will not touch principal. The Department's proposal would put the holders of these mandatory rollover accounts in a position better than anyone else holding an account at the institution.

We believe the Department should allow the charging of the fee that is charged for comparable accounts, and should not create a guarantee of the principal in the account.

Other

We would also ask the Department to consider including some guidance regarding a safe harbor for the handling of current employees. While the responsibility is on the plan administrator to ensure notice is provided, we want to be sure that accommodation is made for addressing current employees. Once these proposals go into effect, there is no sure method of providing the required disclosures to those participants with accounts between $1,000 and $5,000 who may depart employment as these accounts go into effect. We would suggest that it be deemed sufficient if the plan administrator mails the required disclosure to the address available at the time the account is rolled over.

One other issue we would like to see the Department address relates to the information provided from the plan sponsor. We would like to see guidance making it clear that the IRA custodian will be able to reasonably rely on information provided by the plan sponsor. Further, that information should include last known address of the participant, as well as the participant's date of birth (for RMD purposes), social security number (for tracking purposes), as well as the name of the beneficiary, if any, on the account, so that beneficiary could become the beneficiary of this account. We believe this might help reduce the number of missing participant accounts.

We look forward to following up with you regarding these comments, and answering any questions that may arise.

Sincerely,

Lisa J. Bleier
Senior Counsel
American Bankers Association