

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, D.C. 20210
Attn: Automatic Rollover Regulation
Email: e-ori@dol.gov

Dear Sir or Madam

Thank you for seeking comments on your proposed regulation regarding automatic rollover legislation.

Delaware Charter Guarantee & Trust Company, doing business as Trustar[®] Retirement Services ("Trustar") provides financial institutions, employers, and individuals high quality retirement plan products and services. Trustar offers its brokerage partners and their clients affordable trust, administration, and compliance services for tax-advantaged brokerage accounts. Trustar is among the largest non-deposit trust companies in the country, serving as trustee to more than 200,000 retirement and savings accounts and holding in excess of \$10 billion in assets.

Comments

We commend the Department for its efforts in drafting the proposed regulation. We agree that safeguards should be in place to preserve assets for retirement while minimizing risks and maintaining liquidity. The amounts contributed to the automatic rollover individual retirement plan ("automatic rollover account") are small, one-time contributions. Thus, the safe harbor rules should be simple. They should promote easy and cost-effective compliance. Only then would service providers have incentives to service these small accounts.

Allowable Fees and Expenses

The safe harbor imposes two requirements on the fees and expenses incident to the establishment, maintenance, and termination of automatic rollover accounts.

The first requirement prohibits fees charged to automatic rollover accounts from exceeding amounts charged comparable individual retirement accounts that are not subject to the automatic rollover provision. We feel this is appropriate and reasonable. Competition among providers will ensure relative consistency among the fees charged.

The second requirement allows fees and expenses to be charged only against the income earned by the account. The account, in turn, is restricted to investing in products that are designed to preserve the investment principal and thus yield very low returns. For example, an annualized money market rate of 1% would only yield \$10 in earnings on a \$1,000 account. It is unlikely that any financial institutions or providers are willing or can afford to offer their services for this amount.

An automatic rollover account is different from a regular rollover account mainly because it results from an involuntary cash-out and rollover as opposed to a voluntary cash-out and rollover. Forcing providers to maintain separate fee structures and records will increase their costs. A good portion of automatic rollover accounts will be established because their owners cannot be found. Service providers will incur additional costs in trying to locate them or in eventually escheating their accounts to their respective state. Limiting the providers' ability to pass their true service costs to automatic rollover accounts will force them to socialize those costs to their entire IRA customer universe. This will make them less competitive and will cause them to abstain from offering their services to automatic rollover accounts. Thus, employers will have a difficult time finding service providers for automatic rollovers from their plans. Employers, who are also plan fiduciaries, are responsible for selecting prudent investments and service providers with reasonable fees. They should be allowed to perform their duties without any additional and unnecessary regulatory constraints.

Considering the above, we suggest that the Department allow all fees and expenses attendant to an automatic rollover account to be charged against the *assets* of the account and that there be no limits on those fees and expenses.

Thank you for giving us the opportunity to offer comments.

Sincerely

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