



March 29, 2024

VIA ELECTRONIC SUBMISSION

Office of Regulations and Interpretations,
Employee Benefits Security Administration, Room N-5655
U.S. Department of Labor
200 Constitution Avenue, N.W.
Suite N-5677
Washington, DC 20210

Re: Automatic Portability Regulations RIN 1210–AC21

To Whom It May Concern:

On behalf of its members, the Insured Retirement Institute (“IRI”)¹ appreciates the opportunity to provide these comments to the Department of Labor (the “Department”) in response to its Notice of Proposed Rulemaking (the “NPRM”) on Automatic Portability Transaction Regulations (the “Proposal”).²

IRI strongly supported and actively pursued the enactment of the SECURE 2.0 Act of 2022 (“SECURE 2.0”)³ and its predecessor, the Setting Every Community Up for Retirement Enhancement Act of 2019 (the “SECURE Act”).⁴ Building upon the reforms made by the SECURE Act, SECURE 2.0 will provide more opportunities and choices for Americans to save for their retirement years by expanding access to and use of workplace retirement plans, enabling more people to obtain guaranteed lifetime income products, and helping to ensure that retirees do not outlive their retirement savings. Further, IRI supports the automatic portability statutory prohibited transaction exemption codified into law by Section 120 SECURE 2.0 as a mechanism for the maintenance and continued participation in retirement savings.

IRI received and reviewed the comments on the Proposal by the Chamber of Commerce of the United States of America (“U.S. Chamber”). IRI shared this letter with our membership with the U.S. Chamber's permission. Following discussion with our members, IRI supports the U.S. Chamber's comments regarding its requests and

¹ The Insured Retirement Institute (IRI) is the leading association for the entire supply chain of insured retirement strategies, including life insurers, asset managers, broker dealers, banks, marketing organizations, law firms, and solution providers. IRI members account for 90 percent of annuity assets in the U.S., include the foremost distributors of protected lifetime income solutions, and are represented by financial professionals serving millions of Americans. IRI champions retirement security for all through leadership in advocacy, awareness, research, diversity, equity, and inclusion, and the advancement of digital solutions within a collaborative industry community.

² 89 FR 5624 (Jan. 29, 2024).

³ The Consolidated Appropriations Act, 2023, H.R. 2617, Division T (Dec. 29, 2022).

⁴ Pub.L. No. 116–94 (2019).

recommendations regarding the Proposal. Further, IRI supports the U.S. Chamber's specific comments, presenting recommendations, clarifications, and proposals as detailed in its comment letter.

Along with IRI's general support of the U.S. Chamber's comments, IRI would like to emphasize specific comments as they represent aspects of the Proposal that are of high priority to IRI's membership.

Effective Date

The Proposal will come into effect 60 days after its publication in the Federal Register. Considering the extensive modifications outlined in the Proposal, including the incorporation of extra notices, increased responsibilities for plan sponsors, and the implementation of language services that are currently unavailable, adhering to a 60-day effective date would be unworkable. At a minimum, a 12 to 24-month effective date would be necessary should these additional requirements be imposed.

Disqualification

The Proposal authorizes the Department to impose a temporary prohibition on automatic portability providers from relying on the exemption if the Department determines that specific conditions are met.⁵ Disqualifications would substantially disrupt the legitimate expectations of plan sponsors and participants. SECURE 2.0 does not provide the Department with authority to disqualify auto-portability providers from reliance on the exemption, and excise tax liability provides sufficient incentive for an auto-portability provider to comply. Hence, this provision ought to be eliminated.

Further, one of the specific conditions set forth for disqualification based on a foreign conviction of an affiliate is particularly troubling, as IRI has disputed it in response to other DOL-proposed regulations. According to the Proposal, if an affiliate of a provider has been deemed to have provided materially misleading information to the Secretary of Labor, Secretary of the Treasury, or the auditor in connection with automatic portability transactions and the subject of a foreign or domestic criminal conviction, this would result in a temporary prohibition from relying on the exemption.

IRI strongly objected to the disqualification of a Qualified Professional Asset Manager in the Department's *Proposed Amendment to Prohibited Transaction Class Exemption 84-14* (the "QPAM Exemption"); RIN 1210 ZA07.⁶ In our submitted comments, IRI noted, "the Department should not treat Non-Prosecution or Deferred Prosecution Agreements as a basis for disqualification."⁷ IRI expressed concern that "*it would be extremely time-consuming, if not unworkable, for a QPAM to track and assess agreements made by its affiliates with foreign governments to determine whether any such agreement may be substantially equivalent to a non-prosecution agreement or deferred prosecution agreement. As the Department is aware, each country's justice system is different. Governmental authorities may utilize settlement agreements in connection with conduct that blurs the line between civil and criminal offenses.*" In our written comments, IRI articulated apprehension that

⁵ 89 FR 5624, Sec. (c)(10).

⁶ 87 FR 45204 (Jul. 27, 2022).

⁷ IRI Comments on *Proposed Amendment to Prohibited Transaction Class Exemption 84-14* (the "QPAM Exemption"); RIN 1210 ZA07, available at: <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-ZA07/00018.pdf>.

reviewing agreements with foreign governments is outside the scope of the Department’s traditional expertise. Therefore, the Department’s decisions on such matters could be unpredictable or inconsistent.


Additionally, IRI objected to the ineligibility provisions based on the foreign conviction of an affiliate as outlined in the Department’s proposed rule, *Retirement Security Rule: Definition of an Investment Advice Fiduciary* RIN 1210-AC02, and the related amendments to Prohibited Transaction Exemptions (“PTEs”) 2020-02, 84-24, 75-1, 77-4, 80-83, 83-1, and 86-128.⁸ In our written comments submitted on these proposed rules, collectively, IRI urged the Department not to deem a foreign conviction by an affiliate to be the basis for disqualification according to the proposed amendments to PTEs 2020-02 and 84-24, specifically. *“The 84-24 Proposal and the 2020-02 Proposal include provisions that would force entire enterprises out of the retirement business for ten years due to convictions of affiliates or even family members of affiliates for a wide range of offenses, whether in the U.S. or foreign countries, even for convictions that are unrelated to the provision of investment advice or other services to American retirement savers. These disqualification provisions are draconian and not in the interests of plans and their participants and beneficiaries.”*⁹

Therefore, we strongly urge the Department to remove the provision of the Proposal that would temporarily prohibit automatic portability providers from relying on the exemption based on the foreign conviction of a provider’s affiliate.

* * * * *

IRI appreciates the opportunity to comment on the Proposal. IRI believes autoportability transactions will benefit retirement savers and help them prepare for a more secure and dignified retirement. IRI welcomes any opportunity to collaborate with the Department to refine the Proposal, thereby fostering the effectiveness of autoportability transactions and promoting growth in retirement savings. If you have questions about any of our comments or if we can be of any further assistance regarding the Proposal, please feel free to contact the undersigned.

Sincerely,



Emily Micale
Director, Federal Regulatory Affairs
Insured Retirement Institute
emicale@irionline.org

⁸ 88 FR 75890, 88 FR 75979, 88 FR 76004, and 88 FR 76032.

⁹ IRI Comments on 88 FR 75890, 88 FR 75979, 88 FR 76004, and 88 FR 76032, available at: <https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AC02/00346.pdf>