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March 10, 2004

RECEIVED
OFFICE OF REGULATIONS
AND INTERPRETATIONS
2004 MAR 15 PM 4:02

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5669
US Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210
Attn: Automatic Rollover Regulation

Dear Sirs or Madams:

I would like to make the following comments about the proposed regulations. I am submitting three copies of these comments.

1. ESOP's. There is no discussion in the proposed rules how the mandatory rollover provision would apply to ESOP's, especially those sponsored by S corporations. Many IRA custodians and trustees, at least in my area, will not accept a rollover of employer stock, and those that do charge higher fees for providing this unusual service. In addition, the stock would not meet the safe harbor investment rules under the proposed regulations in any event. Presumably, a mechanism such as the immediate payout under Revenue Procedure 2004-14 could be used to protect the S election of a S corporation sponsoring an ESOP. However, it is quite possible IRA custodians and trustees do not want to deal with mandatory rollovers from ESOP's due to anticipated low volume and high administrative costs. I would recommend exempting ESOP's from the mandatory rollover rules, until a market for rollovers develops or providing specific rules to guide ESOP plan sponsors.

2. The proposed regulations provide restrictions on fees charged by rollover IRAs. Please address what a plan sponsor should do if a rollover IRA accepting their mandatory rollovers is not readily available. How widely or how far must a plan sponsor look? The proposed regulations presume that an IRA rollover sponsor will accept annual fees payable only from income; this has not yet been proven in the marketplace. Under current interest rates, a $1,000 rollover may only earn $10 to $20, and an IRA sponsor may not want to handle rollovers for that fee.

   The proposed regulations state fees for establishing a plan do not have to come from income, but the fees must be comparable to fees charged for rollover distributions that are not mandatory rollovers. Please clarify the regulations to state that extra fees for mandatory rollovers of ESOP stock would be permitted, if charged for nonmandatory rollovers of ESOP stock.

3. It would be helpful if the Labor Department could coordinate with the IRS to issue revised model notices to include the requisite notice requirements for the new rollover provisions at the same time final regulations are issued.

Thank you for your consideration of these comments. If you have any questions, please feel free to contact me.

Sincerely,

Roger A. Way, Jr.

RAWJr/lcs