-----Original Message-----
From: Allen Buckley [mailto:Allen.Buckley@smithmoorelaw.com]
Sent: Tuesday, April 06, 2004 11:17 AM
To: moffitt.betty@dol.gov
Subject: Comments on Involuntary Direct Rollover Proposed Class Exemption

I know that the deadline for comments has passed, but I hope that you will consider my comments.

I think that the safe harbor investment should be something other than the money market fund. (I made this comment to Louis Campagna in last week's ALI-ABA telecast seminar.) The money supply (M-1) grew by 7%/year from 1990 to 2000. The consumer price index may not increased at that high of a rate, but it obviously was positive every year. Thus, an account needs to keep pace with inflation.

The preamble to the exemption recognizes that many of the persons who don't act are "missing." Usually, missing people stay missing for a long period of time. If the account was large, would it be consistent with ERISA's fiduciary duties to invest in a money market fund? Certainly a claim for breach of fiduciary duty could be anticipated by the plan for such an investment over a long period of time. Should it matter that the account is small? I think not. Consider a person who worked at several places for a few years each. That person might have 4 or 5 small balances between $1,000 and $5,000. Why shouldn't those accounts get protection?

Based on results since the stock market collapse in 1929, the stock market and the bond markets have produced higher returns than money market funds or similar funds. I question whether it is prudent to set up a design that names the money market fund as the safe harbor. Will you not be inviting people to make the money market fund the safe harbor for accounts of all missing participants? Do you think that a breach of fiduciary duty claim couldn't stand if such a default fund was created?

I think that a better safe harbor fund would be any diversified fund that invests in a substantial number of stocks and/or bonds.

Thank you.

Allen Buckley