



VIA EMAIL  
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April 1, 2004

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

Attn: Automatic Rollover Regulations

Dear Sir or Madam:

I am writing on behalf of Massachusetts Mutual Life Insurance Company ("MassMutual") in response to the Department of Labor's request for comments with respect to the proposed regulations regarding the Automatic Rollover Safe Harbor Rule.

MassMutual is a mutual life insurance company that was organized in 1851. It is a member of the MassMutual Financial Group, which is a global, growth-oriented, diversified financial services organization with total assets under management in excess of \$285 billion. Its family of companies serves the needs of over ten million clients by providing a broad-based portfolio of financial products and services including: life insurance, annuities, disability income insurance, long term care insurance, retirement planning products, mutual funds, money management, and other financial products and services.

MassMutual commends the Department for its efforts in providing guidance to plan fiduciaries in regard to automatic rollovers of mandatory retirement plan distributions. We believe that automatic rollovers, if properly designed, are a good step toward preserving American's retirement savings. Eliminating cash distributions as the default option for low-balance participants will result in a greater percentage of distributions remaining in tax advantaged retirement accounts.

MassMutual believes that the critical goal of preserving American's retirement savings would be furthered by revising the proposed regulation in two respects. First, MassMutual believes that the fee cap contained in the proposed regulations will discourage financial institutions from offering automatic rollover IRAs. Second we believe that the investment options recommended

in the proposal are not the best choice for ensuring that plan participants build sufficient retirement savings.

### **Limitation on Fees and Expenses**

The proposal provides that fees and expenses charged with respect to an automatic IRA must meet two general conditions. First, they must be consistent with fees and expenses charged in the market place. Second, they cannot exceed the fees and expenses charged by the provider with respect to comparable IRAs. MassMutual believes these are sensible requirements that will further the goals of the proposal. However, the proposed regulation would also limit the ongoing fees charged in an IRA to the amount of investment earnings realized in the account. This requirement is potentially inconsistent with the two general requirements since it is likely that the amount of earnings generated by the type of low-risk investments recommended in the proposal would not be sufficient to cover the fees traditionally charged on many IRAs. For instance, an IRA with a balance of \$1000 could be expected to generate one or two percent in earnings (\$10-\$20) if invested in a money market fund or interest bearing savings account. This would be insufficient to cover the annual fees currently charged on many IRAs, even those with relatively low fees.

MassMutual suggests that the Department eliminate this cap on fees. The other requirements contained in the proposal - that fees be consistent with market rates and not exceed those on comparable IRA products - are sufficient to ensure that the automatic IRAs are not disadvantageous relative to other investments.

### **Permitted Investments**

The proposal states that in the Department's view, investments under the safe harbor should be designed to minimize risk, preserve assets for retirement and maintain liquidity. The Department further states that such investments would typically include money market funds, interest bearing savings accounts and certificates of deposit. Although the proposal doesn't absolutely require plan sponsors to select from among these options, sponsors will almost certainly do so in order to avoid potential liability. Given the necessarily low return on these types of investments, they will not serve to grow a participant's retirement savings over time and may actually erode in real value based on inflation. This is a particularly important issue given that many participants are likely to remain in automatic IRAs for many years or until retirement.

MassMutual believes that the Department should revise the proposed regulation to make it clear that appropriate investments include investment options other than those noted in the proposed regulation. These should include so-called life cycle mutual funds, which are designed to offer risk and return characteristics appropriate to the age of the investor, as well as balanced funds, which generally seek a high rate of return over time while preserving principal. Life cycle funds are an appropriate investment for an automatic IRA because they are periodically rebalanced to prevent any asset class from becoming overweighted thereby preserving assets while minimizing risk

MassMutual recommends that the final regulation make clear that any of these investment alternatives and other low to moderate risk investments will be considered appropriate and meet the requirements for safe harbor protection, provided the IRA meets the other requirements set forth in the regulation. MassMutual also recommends that the final regulation allow fiduciaries to select automatic IRA investments, which are comparable to the investments, chosen by the participant while in the plan. For example, if a plan participant elected to invest equal shares of his or her plan account in a bond fund, a growth fund and an income fund, the plan fiduciary could select comparable bond, growth and income funds in the same proportion when establishing the participant's automatic IRA. Allowing fiduciaries the flexibility to invest in a broader array of investments will ultimately result in increased retirement savings for plan participants.

We appreciate the opportunity to provide further input on the development of this rule. We believe that MassMutual brings an important perspective and are pleased to make this information available to the Department. MassMutual also supports the comments of the American Benefits Council and the Profit Sharing Council of America. If additional information is needed from us please do not hesitate to me at 413-744-0243.

Sincerely,

Camille Donald  
Counsel