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VICE PRESIDENT, RETIREMENT & PENSIONS



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VIA HAND DELIVERY

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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

Dear Ladies and Gentlemen:

On behalf of the American Council of Life Insurers ("ACLI"), I would like to offer our industry's comments on the proposed regulations on automatic rollovers. The ACLI represents the interests of over 350 life insurers with millions of policyholders, accounting for nearly 70% of the life insurance premiums in the United States. Our member companies provide life insurance, annuities, pensions, long-term care insurance, disability income insurance and other retirement and financial protection products designed to help Americans plan for and achieve retirement security. Insurers hold one-fifth of the privately administered retirement assets in the United States – approximately \$1.6 trillion.

In response to the Department's request for information on automatic rollover issues released on January 7, 2003, the ACLI submitted a comment letter on a variety of issues included in the proposed regulations. Our overarching comment in our previous submission urged the Department to adopt rules that make automatic rollover accounts simple to administer and maintain in order to ensure their viability. These accounts will be small in dollar amount, between \$1,000 and \$5,000, with no requirement or expectation that further contributions will be made. As a result, we believe complicated rules with respect to their establishment, investment or maintenance will necessarily result in few available providers, particularly if the additional costs of compliance cannot be charged against these accounts. We also recognize and concur with the Department's concern that high fees will deplete the value of these accounts to the detriment of their owners.

In general, we commend the Department for the provisions included in the proposed regulations on automatic rollovers. We note that a number of ACLI's suggestions included in our response to the January 7, 2003 request for information were incorporated into the proposed regulations. We believe a

number of the proposed regulations' provisions will facilitate the establishment of automatic rollover accounts, including the following:

- Qualifications for an Individual Retirement Plan - mandatory distributions must be directed to an individual account plan as defined in section 408(a) of the Code;
- Permissible investment product standards – investment products that are designed to preserve principal and provide a reasonable rate of return including money market funds, interest-bearing savings accounts, certificates of deposit issued by a bank or similar financial institution and stable value products; and
- Prohibited transaction relief permitting regulated financial institutions to select itself or an affiliate as the individual retirement plan trustee, custodian or issuer to receive automatic rollovers from its own plan and select its own funds or investment products for automatic rollovers from its own plan.

However, ACLI does have concerns with the provision of the proposed regulations relating to permissible fees and expenses. Consistent with our main comment in our letter in response to the Department's January 2003 request for information, we believe complicated rules relating to establishment and maintenance of automatic rollover accounts will result in limiting the number of providers offering such accounts if the associated costs cannot be charged to these accounts. ACLI believes that a limited number of providers offering automatic rollover accounts will also lead to features that are less favorable in the aggregate, which will ultimately harm the participant. We believe this will be the likely result if the second fee limitation listed in the proposed regulation is finalized. We recommend that the Department limit the fee limitation to the first provision listed in the proposed regulation – that expenses charged could not exceed amounts charged by comparable individual plans of the provider not subject to the automatic rollover rules.

Permissible Fees and Expenses

The proposed regulations would impose certain limits on fees and expenses financial institutions could charge automatic rollover accounts. First, expenses charged could not exceed amounts charged by comparable individual retirement plans of the provider that are not subject to automatic rollover provisions. Second, expenses could not exceed income earned by the automatic rollover plan.

We believe that imposing new and complicated fee restrictions on automatic rollover accounts will certainly limit the number of providers willing and able to offer these accounts to employers and their participants. Currently, there is no requirement in the Code or other applicable law or regulation that limits the amount a financial institution can charge an IRA or similar account. The current IRA market is very competitive, which serves to keep fees and expenses charged low and relatively consistent between and among financial services firms competing in the IRA market.

As a result, banks, mutual funds and insurance companies compete in offering various different investment products to their customers, with a keen awareness of maintaining competitive fees for IRA products in order to maintain or gain IRA business. Imposing separate fee requirements for automatic rollover accounts will constrain product design for these accounts and limit the number of financial institutions offering these accounts. Such fee limitations will actually increase the cost of offering these types of accounts. Fee limits on automatic rollover accounts will require additional compliance review

and systems checks not currently required for other similar accounts. These additional requirements will increase the cost of offering automatic rollover accounts by financial institutions, making such business less attractive.

From a compliance and systems viewpoint, the second fee limit listed in the proposed regulations that limits the expenses charged to income earned by the account, would require significant systems upgrades by financial institutions interested in offering automatic rollover accounts. Instead of charging these accounts standard rates imposed to all IRA-type accounts offered by the provider, the provider would need to create a systems mechanism to compare *each individual account's* income earned for the year and *compare* that amount to the standard fee. Depending on the amount (if any) of the income earned, the systems mechanism would need to determine how much (if any) of the standard fee that could be charged to the account. This is an additional systems check that is not required for any other account and would require specific systems upgrades for automatic rollover accounts. This additional fee limitation and the resulting compliance costs would most certainly outweigh the costs for many financial institutions of offering and maintaining automatic rollover accounts, which are relatively small accounts (between \$1,000 and \$5,000) with no expectation of future contributions.

In addition, we suggest that this type of fee limitation may be characterized as discriminatory by other regulators, such as state insurance departments. State insurance regulators generally require that customers in the same class of business be treated comparably. Customers holding IRA accounts not formed under the automatic rollover rules may be charged fees that are higher than fees charged to other individual retirement accounts. Under the Department's proposed regulations, fees charged to automatic rollover accounts may be "capped" based on earnings. We do not believe that state insurance regulators will deem automatic rollover accounts to be a separate class of business. Therefore, we do not believe that life insurance companies will be able to "cap" fees charged to automatic rollover accounts as a result of the ban on discriminatory practices enforced by state insurance regulators.

We recommend that the Department eliminate the second fee limitation in the proposed regulations limiting expenses charged to an automatic rollover account to income earned by the account in any given year. We believe retention of the first fee limitation – that fees charged to automatic rollover accounts not exceed the fees and expenses charged by the provider for comparable individual retirement plans not subject to the automatic rollover provisions – will provide plan fiduciaries and participants with adequate protection from being charged unreasonably high fees in these automatic rollover accounts. We believe that imposing reasonable, consistent and easy to administer fee requirements (i.e., not charging automatic rollover accounts higher fees than a provider charges in comparable IRA accounts not subject to the automatic rollover rules) will result in a broad array of financial service providers offering these accounts at competitive rates. If financial institutions are required to significantly change their fee structure, compliance oversight or systems in order to offer these accounts, we believe the result will be few institutions offering these accounts.

We also believe that it is inherent in the plan fiduciary's responsibilities in choosing the service provider offering the automatic rollover accounts to ensure that the fees are reasonable and consistent with the marketplace. A fee review would be part of any due diligence that a plan fiduciary would undertake when it searches for automatic rollover service providers.

Office of Foreign Assets Control & Anti-Money Laundering

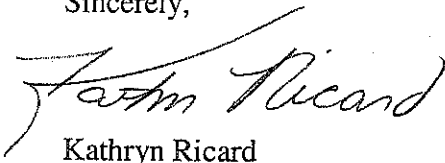
ACLI also requests that the Department coordinate with the Department of Treasury to develop guidance regarding the Office of Foreign Assets Control (OFAC) and anti-money laundering requirements that would pertain to these accounts. While we commend the Department for discussing the issues with Treasury and for including the discussion in Section C of the proposed rule, we note that the Customer Identification Program (CIP) rules applicable to the insurance industry have not yet been promulgated. In addition, ACLI is concerned that the requirements regarding OFAC's "Specially Designated Nations and Blocked Persons" (SDN) list apply at the time the account is established. We believe that the OFAC rules preclude any entity from "doing business with" individuals identified on the SDN list. We recognize the possibility that given the nature and size of these accounts, Treasury may create an exception under both OFAC and the USA PATRIOT Act.

Conclusion

ACLI believes that a simplified, consistent fee requirement with current IRA requirements would help ensure that plan fiduciaries and participants have a broad spectrum of choices for automatic rollover accounts relating to products and investment vehicles.

If you have any questions about our comments or would like to discuss them further, please call me at (202) 624-2152 or email me at kathrynicard@acli.com.

Sincerely,



Kathryn Ricard

cc: Ann Combs, U.S. Department of Labor
Robert Doyle, U.S. Department of Labor