March 31, 2004

U.S. Department of Labor
Office of Regulations and Interpretations
EBSA N-5669
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Attn: Automatic Rollover Regulation
(69 Fed. Reg. 9900)

To Whom It May Concern:

AARP is submitting these comments in response to the proposed regulation issued March 2, 2004, that would set standards for meeting the fiduciary responsibilities under the automatic rollover provision of §401(a)(31) of the Internal Revenue Code (Code). The proposed regulation would establish a safe harbor for plan fiduciaries to designate an institution to receive the automatic rollover and to make the initial investment choice.

AARP, with over 35 million members, strongly supported the provision enacted in the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) to encourage the preservation of pension benefits for retirement. Section 657 of EGTRRA requires that if a plan participant leaves a job and does not elect to have vested benefits between $1,000 and $5,000 transferred to another retirement plan or distributed, then the benefit will be rolled over to an individual retirement account (IRA). Rather than resulting in a "cashed out" lump sum distribution, this provision makes it more likely that these modest amounts will be preserved for retirement.

Overall, the proposed regulation provides a fair and commonsense safe harbor for plan sponsors to meet fiduciary standards with respect to transferring small retirement plan amounts to an IRA. And, by using the existing individual retirement plan structure, plan sponsors and participants alike will surely find the process of rolling over pension amounts easy and understandable. AARP does, however, have some specific comments about the proposed regulation and class exemption for EBSA's consideration.

Under the proposed regulation, plan fiduciaries would have to furnish participants with a summary plan description (SPD) or a summary of material modifications (SMM) describing the retirement plan's automatic rollover provisions. The disclosure would have to include a general explanation of the standards applicable to the rollover accounts, the employer's plan contact information, and the name of the financial IRA institution selected for the rollover account along with details of its fees and expenses.

In addition to making the automatic rollover notice available in pension documents, plan sponsors should provide an individualized notice to the separating participant before any rollover is made. The notice should include the same information contained in the SPD or SMM, the participant's benefit amount and generic tax information on direct transfers, rollovers and distributions of pension benefits. If the information is not provided with the Code §402(f) notice required for voluntary transfers (which must be provided no less than 30 days or no more than 90 days before the benefit's distribution), then it should be provided within a reasonable time before the participant or plan sponsor has to make a decision about a direct rollover. Individualized notice would help ensure that the participant has the tools to make an informed decision before the plan makes the decision itself.

Electronic provision of the notice for the safe harbor automatic rollovers should include the participant protections in the final regulations on New Technologies in Retirement Plans (65 Fed. Reg. 6001). Those safeguards include the right to request and receive a paper copy of the electronic notice free of charge. Electronic notices should be understandable and capable of being printed onto paper. The safe harbor regulations should also include a default paper method of providing notice to participants without access to electronic means of communication and to beneficiaries with a right to plan notices.

AARP also urges EBSA to adopt a requirement that, to qualify for the safe harbor, an employer must include as part of the arrangement with the IRA sponsor, a provision that the institution must notify the participant with information containing the account number, amount deposited, and investment choice. The information could be sent to the last known address of the separated participant and would provide that person with the basic facts of the direct rollover. Thus, the individual would have a record that the rollover took place, the dollar amount that was contributed, as well as the name and address of the IRA trustee.

AARP supports the approach taken by EBSA with respect to fees charged by financial institutions for individual accounts established with direct transfers. By requiring comparable treatment of participants whose benefits are automatically rolled over with that of individuals who open and maintain an IRA, EBSA would help preserve the value of the rollover account. Disproportionately high fees would unfairly reduce generally smaller and less active accounts. Again, this provision will help to preserve and increase the level of benefits that will be available for retirement.

AARP urges EBSA to clarify in the final regulation that any establishment fees charged to individual retirement plans cannot equal or exceed the amounts of the unbundled fees as a whole. The institutions which provide individual retirement plans should not be allowed to sidestep the requirement that non-establishment fees can only be charged against the income earned by the IRA by assessing a larger establishment fee that rolls in the amounts of other types of charges imposed by the plan. Any establishment fee for a rollover account should be no greater than the amount charged to an individual who opens an IRA with the institution.

AARP appreciates the opportunity to comment on the proposed regulation and class exemption. If you have any questions or need further assistance, please feel free to contact me or Amy Shannon of our Federal Affairs staff at 202/434-3760.

Sincerely,

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