

In your request for information regarding 29 CFR Part 2550 Rin 1210-AA92, I would like to submit a response. I am a financial advisor with UBS PaineWebber. I have series seven, sixty-three and sixty-five registration with the National Association of Securities Dealers. I also hold an Insurance license in several states. My initial registration for the series seven was in 1982. One focus of my business is retirement services. I work with Taft Hartly accounts and corporate accounts. I am not an attorney; I am an interested person wishing to get better clarity and uniformity regarding prohibited transactions. I am not responding to your "Request for Information" on behalf of my firm.

As was provided in Advisory opinion 2001-09 a simple set of guidelines clarified what may have been thought a prohibited transaction. I think today most large financial service firms including mine can provide simple financial planning tools, such as retirement planning. The problem is the cost. Small accounts require the same maintenance and legal compliance as large accounts. The maintenance expenses are also the same.

The following is in response to you questions.

1. **Standards for Safe Harbor Entity.** Entities should have a full range of services. This would include, money market funds, Certificates of Deposit, and mutual funds. In addition brokerage services can be provided. Any entity or provider should be eligible if they conform to Advisory Opinion 2001-09.

In order to give a participant a full range of services the participant should be aware of the limitations of "One Family Plans" i.e. lack of diversification. If the current provider allows in kind transfers this can be a cost savings. In many instances there are fees for closing accounts if the participant doesn't stay with the same provider. However if a new entity is selected, that entity may wave the first years fee to offset the closing fee.

2. **Standards for Safe Harbor Initial Investment.** The initial investment should be into a money market fund or some short term fixed instrument that can automatically be renewed. It would be unreasonable to assume what the participant wants. If the participant has not made contact with the provider or is unable to be located a very conservative approach should be used.

3. **Establishment Cost.**

4. **Termination Costs.**

5. **Maintenance Fees.**

6. **Investment Fees/Transaction Costs.**

7. **Surrender Charges.**

This group of Costs and Fees can be covered together. These costs and fees vary from full service providers to discount brokers. In the instance of a full service provider like UBS/PaineWebber, There is no Establishment Cost, the termination fee is \$50 the maintenance or annual fee is \$40. Investment costs will vary depending on the participant's investment elections. There are no transaction costs to maintain money

market balances or to purchase FDIC insured Certificates of Deposit. There is a minimum an increment size limit of \$1000.

Surrender charges apply to Insurance/Annuity products and to some classes of mutual funds; "B" and "C" shares. These fees can range from 1% to 7% of the cost value.

In the case of very small accounts less then \$5000, the annual fee can seem quite high with today's low interest rates on money market balances. In some instances the interest earned may not offset the maintenance fees. They are now less than 1% after internal management fees. There are discount brokers that provide IRA accounts that do not have any of the above fees. If there is the intent

**9. Prohibited Transaction Relief.** There should be a review and restatement of what would be a Prohibited Transaction, such as with Advisory opinion 2001-09. By using the guidelines of Advisory opinion 2001-09 there would be an establishment of a "standard" that all entities could follow. This would provide Prohibited Transaction Relief. If accounts are so small that it is prohibitive or too time consuming to establish small accounts, relief should be provided to establish a pooled account for the benefit of the participants with tax deferred status.

In general, providers, affiliates such as consultants, Trustees and or Employers need Prohibited Transaction Relief to provide services to participants while they are in a plan and when they exit a plan. If Advisory opinion 2001-09 could be used as a "standard", then all dealing between all parties would not prohibited. The difficulty is when they all work in concert there is the question of what is a Prohibited Transaction.

**10. Legal Impediments.** Without the signature of the participant the automatic rollover would have to be signed in advance by the participant and the Financial Institution cannot open an account for the participant without their signature. There may also be a problem if the signatures are old. In addition the financial information must be current.

**11. Disclosure.** All information about automatic rollovers, fees and investments should be disclosed to the participant upon entering the plan.

**12. Low-Cost IRAs.** Depending on the economic nature of the participants low cost IRAs would be prudent. The employer might try to contract with their bank or Discount broker. The criteria would be to set a limit on investment selection. Some form of guaranteed return after fees are deducted should be provided.

**13. Current Practices.** It most instances, accounts under \$5000, can have the balances sent to the participant with withholding, at the Employers discretion. The costs are generally bundled into the total cost of the plan, but it is not significant. The data is not available or kept on how often this is done.

14. **EGTRRA Provisions.** As discussed, the additional cost for automatic or mandatory rollovers will be nominal to \$50 a year. The question is who will pay this cost. It probably will be imposed on the participant as they leave and maintain the IRA if the employer has the choice.

**Impact on Small Entities.** Most small entities can comply with new guidelines with significant annual expense our time. Most small plans have become manageable due to technological improvements by Third Party Administrators.

I would like to reiterate that I am not responding to your "Request for Information" on behalf of my firm.

Keith F Ryan  
516 745 8841