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National Defined Contribution Council

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Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5669
U.S. Department of Labor
Washington, DC 20210

Re: RFI on Automatic Rollovers

Ladies and Gentlemen:

On behalf of the National Defined Contribution Council (NDCC), I am writing to provide comments in response to the Department of Labor's Request for Information, published January 7, 2003 in the Federal Register, on the automatic rollover provisions added by the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA).

The NDCC is made up of more than 60 member companies representing all aspects of the defined contribution industry. NDCC members manage approximately 80 percent of all 401(k) assets in the United States. NDCC supports policies that promote retirement security for all Americans and that encourage employers to sponsor retirement plans for their employees.

Our General Comments

In general, NDCC believes that the EGTRRA provisions for automatic rollovers of small (between \$1,000 and \$5,000) retirement plan account balances does not address the key problem facing plan sponsors and service providers with respect to such small benefits: the treatment of benefits held on behalf of "missing participants."

Since the automatic rollover mechanism simply results in a shift of an individual's account from an employer plan to an IRA, it does nothing to increase the likelihood that those benefits will eventually be paid to a participant who cannot be located. Thus, the safe harbors will not by themselves be sufficient to address the missing participant issue because the legislation did not address this issue. Accordingly, the NDCC strongly encourages the Department of Labor and other regulatory agencies to consider legislative proposals that would allow missing participants' benefits to be forwarded to a central agency, such as the Pension Benefit Guaranty Corporation, the Treasury Department, or the Social Security Administration, which would be charged with holding this account balances until the participant is located and then distributing the benefit.

We also believe that, given the small size of the account balances and the likelihood that no future contributions will be made to these accounts, IRA providers may be reluctant to accept automatic rollovers. Thus, as a general principle, the NDCC believes that regulations must be simple and flexible to avoid further discouraging IRA providers from making these accounts available.

Our Specific Comments

More specifically, the following are our comments on various administrative and regulatory issues related to automatic rollovers:

Scope. The mandatory rollover provision of EGTRRA should be construed to apply only to those situations where:

1. The participant can be located (e.g., phone contact is established; written communication is not returned as undeliverable); and
2. The participant neither requests a distribution nor directs the plan sponsor or service provider to process a rollover in the manner determined by the participant.

This definition of the scope of the rollover requirement is important for two reasons. First, it avoids the risk of simply transferring accounts for lost participants to IRA providers. This will increase the likelihood that IRA providers will agree to accept these rollovers since they will have an identified customer with whom they can establish a relationship. Second, this facilitates the communication and approval process with the participant as described below.

Should the DOL lack the legal authority to permanently narrow the scope of the rollover provisions, it is suggested that a temporary rule of convenience be considered to narrow the scope for three years. That would allow time for enabling legislation to be passed.

Default Investments. Since a wide variety of investments may be appropriate for an IRA resulting from an automatic rollover, several categories of safe harbor investments should be available. Neither the plan sponsor nor the IRA provider should be subject to ERISA or other liability in connection with the investment performance so long as the investments met one of these safe harbors and were adequately disclosed in advance to participants. Eliminating lost participants from the scope of the mandatory rollover rules is the key to ensuring that participants become aware of the default protocols that will apply to them.

The specific safe harbor IRA investments should include any stable value fund, a "principal protection" or money market fund, and any balanced fund investment with risk and return characteristics similar to an investment available under the distributing plan, provided that the investment management fees charged do not exceed those charged by the IRA provider for its other similarly situated customers.

Safe Harbor Entity. We believe that a plan sponsor should have the flexibility to choose any entity that is permitted to act as an IRA trustee, custodian or other provider under

Section 408 of the Internal Revenue Code as the IRA provider for purposes of accepting automatic rollovers. A more limited range of safe harbor entities would only circumscribe the universe of potential IRA providers.

Timing of Automatic Rollovers. The Department's guidance should include specific information about the minimum time period that a plan sponsor must wait, after contacting the participant about the need to take a plan distribution, before initiating the automatic rollover process. In addition, the guidance should outline the steps a plan sponsor is expected to take in attempting to contact the participant in connection with such a distribution.

Disclosure. The process, timing and effect of an automatic rollover should be disclosed in advance to plan participants. The regulations should be flexible enough to allow for the disclosure to be communicated through a variety of media, including electronic media.

Legal exposure to IRA Providers. Among the impediments to the establishment of automatic rollovers may be an IRA provider's reluctance to establish an IRA account without the IRA owner's signature or other evidence of acceptance. The regulatory guidance should clarify that, in the case of an automatic rollover, the IRA provider may accept the plan sponsor's signature on the application and any other necessary IRA documents on behalf of the IRA owner. Further, IRA providers should be protected against any claims that accepting such information as is provided by the plan sponsor about the IRA owner's identity will not violate any state or federal regulatory requirements concerning customer identification responsibilities.

Fees: In order to encourage participation by IRA providers and to allow for changing market conditions over time, administrative fees should not be subject to any predetermined limits. Instead, administrative fees should be bounded by the general constraint that they not exceed the provider's administrative fees for similar accounts not established as part of a mandatory rollover program.

We appreciate the opportunity to offer our views on this important matter. Should you wish to discuss any of the issues addressed in this letter, please call me at 303-770-5353.

Sincerely,

Albert E. Brust
Executive Vice President