



**10 South Riverside Plaza, Suite 1610, Chicago, Illinois 60606-3802**  
 312.441.8550 Fax: 312.441.8559 [www.psc.org](http://www.psc.org)

March 10, 2003  
 (submitted electronically)

Office of Regulations and Interpretations  
 Employee Benefits Security Administration  
 U.S. Department of Labor  
 Washington, DC

The Profit Sharing/401(k) Council of America (PSCA) is pleased to comment on the Request for Information on Fiduciary Responsibility Under the Employee Retirement Income Security Act of 1974; Automatic Rollovers. PSCA is a 1,200 member national association of employer plan sponsors that for over fifty-five years has identified and shared best practices with its members, represented their interests in Washington, and provided analysis and reportage on the latest regulatory changes. PSCA members range in size from a six-employee auto parts manufacturer to firms with hundreds of thousands of employees. Our members believe that profit sharing, 401(k), and related savings and incentive programs strengthen the free-enterprise system, empower and motivate the workforce, improve domestic and international competitiveness, and provide a vital source of retirement income.

PSCA has longstanding concerns about the loss of retirement assets in conjunction with the termination of employment. PSCA was the driving force in the issuance of Revenue Ruling 2000-36 that approved the voluntary establishment of direct rollovers of involuntary qualified plan distributions to an IRA. We note that the Department clarified the application of Title I of ERISA in the context of these rollovers. We appreciate the ongoing support of the Department in our legislative efforts to clarify section 657 of EGTRRA regarding the responsibilities of a plan sponsor once a proper default rollover is concluded.

Our comments follow. We have organized them in accordance with the layout of the Request for Information:

#### 1. Standards for Safe Harbor Entity

What criteria should apply to the DOL's determination that an IRA custodian, trustee or issuer qualifies as a safe harbor entity? *Some of the criteria should include a determination into (i, the IRA provider's financial rating, if any, provided by an independent service or governmental agency, (ii) the assets and liabilities of the IRA provider, and (iii) the level of insurance maintained by the IRA provider in the event of bankruptcy or any other type of insolvency-related events.*

Should the standards differ depending on whether the IRA is an account or annuity? *No.*

Should IRA providers who are existing plan service providers receive any special consideration if plan investments can be rolled directly in-kind without transaction fees for liquidating plan investments and purchasing IRA investments? *No special consideration should be given to such service providers, but their ability to possibly offer lower fees should be considered by plan sponsors.*

## 2. Standards for Safe Harbor Initial Investments

What criteria should apply to the DOL's determination that an initial investment qualifies as a safe harbor investment? *The Department should provide guidance on particular types funds that will automatically qualify as a safe harbor investment or investments (e.g., money market funds, balanced funds, or some other low-risk class of fund) and/or, in the alternative, permit (but not require) the plan sponsor and/or the IRA provider to engage in fund "mapping" (i.e., the initial investment in the IRA is invested in the fund(s) offered by the IRA which most closely resembles the former plan participant's investment selection(s) within the tax-qualified retirement plan from which the distribution is being made).*

Should consideration be given to including or excluding specific investment vehicles in the safe harbor? *Yes. Investment vehicles that invest in riskier investments should generally be excluded, unless "mapping" (described in Section 2.a above) is used.*

If mutual funds are included, should they be limited to passively invested mutual funds or include all publicly traded mutual funds? *Unless "mapping" (described in Section 2.a above) is used, mutual funds should initially be limited to passively invested mutual funds in order to reduce the volatility in the return until the account holder makes an active determination as to the type of mutual fund that he or she would like to invest in.*

Should the criteria include specific asset allocations standards? *If the choices set forth in Section 2.a above are not used, then the criteria should include specific asset allocations standards. Such standards could be based on age where, for example, assets belonging to a younger plan participant (satisfying a certain threshold age level or under) could be invested in a slightly riskier investment vehicle than assets belonging to an older plan participant.*

## 3. Establishment Costs

What factors should be considered in determining the reasonableness of these costs imposed by an IRA provider under the safe harbor? *Such factors should include (i) the cost charged by other IRA providers in the market (including costs charged by IRA providers in the event of an early termination of an IRA account (i.e., termination within one year of the account's inception)), and (ii) the service, or extra services, that the IRA provider has made available to the account holder (i.e., 24-hour customer service). An additional factor to consider is whether the IRA provider has a graded fee scale (up to a maximum fee limit) which depends on the size of the assets being rolled over into an IRA account.*

Should regulations clarify that establishment costs are either an expense of the distributing plan or a charge to the IRA funds of the account-holder? *Yes. The establishment costs should be charged to the IRA funds of the account holder and there should be no ambiguity as to who shall bear such cost. To impose such establishment costs upon the distributing plan or plan sponsor may be too burdensome especially on small plans and/or small plan sponsors.*

#### 4. Termination Costs

What factors should be considered in determining the reasonableness of these costs imposed by an IRA provider under the safe harbor? *One such factor should include the cost charged by other IRA providers in the market (including costs charged by IRA providers in the event of an early termination of an IRA account (i.e., termination within one year of the account's inception)).*

#### 5. Maintenance Fees

What factors should be considered in determining the reasonableness of these fees imposed by an IRA provider under the safe harbor? *Such factors should include (i) the cost charged by other IRA providers in the market, and (ii) the service, or extra services, that the IRA provider has made available to the account holder (i.e., 24-hour customer service).*

#### 6. Investment Fees

What factors should be considered in determining the reasonableness of these fees imposed by an IRA provider under the safe harbor? *One such factor should be the fees charged by other IRA providers in the market.*

Should the IRA principal be guaranteed with all investment fees, maintenance fees, and establishment costs being charged to investment earnings? *No. Fees and costs that are charged to the account holder should be reasonable within the applicable market.*

#### 7. Surrender Charges

What factors should be considered in determining the reasonableness of these charges imposed by an IRA provider under the safe harbor? *One such factor should be the cost charged by other IRA providers in the market.*

#### 8. Transfers Within One Year

Should the DOL consider refund or waiver features in determining whether an IRA provider or initial investment qualifies for safe harbor treatment? *IRA providers that provide such refund or waiver features should receive special consideration since such features permit greater flexibility and mobility for the account holder without penalizing the retirement assets of such account holder.*

#### 9. Prohibited Transaction Relief

Is there a need for prohibited transaction relief that would enable a plan sponsor, as the plan administrator, to select itself or an affiliate as the IRA provider, or to choose an initial investment in which it may have an interest? *Yes, but such relief should be limited to situations where the plan sponsor and/or its affiliate are entitled only to receive "reasonable compensation" in choosing such initial investment or serving as an IRA provider for its plan participants and beneficiaries. "Reasonable compensation" should not include a profit which would ordinarily have been received in an arm's-length transaction, but must be sufficient to reimburse the plan sponsor and/or its affiliate for their cost.*

#### 10. Legal Impediments

What legal impediments are plan administrators likely to encounter in establishing IRAs for automatic rollovers on behalf of separating employees? *Although not a legal impediment per se, plan*

*administrators will be required to expend more time and financial resources in preparing and obtaining all information relating to the IRA account necessary to fully disclose such information to plan participants and beneficiaries.*

#### 11. Disclosures

Should the regulations impose any additional disclosure requirements on safe harbor IRA providers? *Yes. One additional disclosure requirement that should be imposed would be to require full and accurate disclosure of all fees and costs charged by such IRA providers written in easily understandable language.*

#### 12. Low Cost IRAs

Is there a need for special consideration of IRA providers who provide low-cost IRAs for automatic rollovers? *Yes. IRA providers who provide low-cost IRAs (including IRAs with a graded fee schedule that depends on the size of the investment) should receive special consideration since their low-cost feature permits greater flexibility and mobility for the account holder without penalizing the retirement assets of such account holder.*

What criteria should be used to demonstrate low-cost or the promotion of the preservation of assets for retirement income by IRA providers? *Such criteria should include (i) the cost of establishing and terminating an IRA, (ii) the cost of the maintenance fees, (iii) the investment fees, (iv) and access fees charge in accessing the account.*

#### 13. Current Practices

How many qualified retirement plans currently have mandatory distribution provisions? Typically, what are those provisions? *According to our annual survey of 2001 plan year experience, only 14.9% of plans allow pre-retirement balances of less than \$5,000 to be retained in the plan.*

#### 14. EGTRRA Provisions

What additional administrative costs will compliance with the EGTRRA automatic rollover requirement impose on qualified retirement plans and the assets of plan participants. *Such additional costs include (i) the cost and time incurred by a plan administrator to shop for a reputable IRA provider that will meet the requirements of the DOL's regulations, (ii) the establishment cost associated with setting up the IRA account, and (iii) the disclosure costs in preparing and distributing any required notices and relevant information to plan*

Thank you for considering these comments. If you have any questions, or if I can be of any assistance, please contact me at 312-441-8550 or Edward Ferrigno, vice president, government affairs, at 202-626-3634.

Sincerely,

David L. Wray  
President