March 29, 2024

The Honorable Lisa M. Gomez
Assistant Secretary
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20210

Re: Automatic Portability Transaction Regulations; RIN 1210-AC21

Dear Assistant Secretary Gomez:

Portability Services Network, LLC ("PSN") appreciates the opportunity to comment on the Department of Labor's (the "Department") proposed rule under section 4975 of the Internal Revenue Code of 1986 as amended (the "Code") for automatic portability transactions (the "Proposed Rule"). The Proposed Rule would implement the statutory prohibited transaction exemption under section 4975(d)(25) of the Code, including the rules relating to automatic portability transactions set forth in section 4975(f)(12) of the Code, as provided by Section 120 of the SECURE 2.0 Act of 2022 (collectively, the "Statutory Provisions").

PSN is an industry-led utility building a nationwide, digital hub connecting workplace retirement plan recordkeepers and the plan sponsors they serve that elect the auto portability service. For recordkeepers offering the service and the plans that have elected the auto portability solution, PSN acts as a clearinghouse for automatically locating a participant's active 401(k), 401(a), 403(b) or governmental 457(b) account in their current employer's plan and transferring the same participant's account subject to the plan's mandatory distribution provisions from their prior employer's plan into their active account. With Alight, Empower, Fidelity, Principal, TIAA, and Vanguard as founding recordkeeper-members, PSN's services can currently be made available to approximately 82 million workers across more than 185,000 employer-sponsored retirement plans. PSN's solution is also open to participation by any plan recordkeepers in the retirement industry so that its services can be made available to all qualifying employer-sponsored retirement plans in the United States. In making auto-portability services available, PSN uses technology developed, and services provided, as licensed to PSN, by its co-owner Retirement Clearinghouse, LLC ("RCH").

I. Introduction

PSN appreciates the time, thought, and effort that the Department has devoted to auto-portability. We wholeheartedly agree with your recent statements highlighting the importance of auto-portability to improve retirement security in the United States.[1] Auto-portability addresses the problem of cash-out leakage that occurs when plan participants prematurely take taxable

[1] Plan Sponsor, *EBSA's Lisa Gomez Calls Auto-Portability Key to Retirement Security* (Jan. 30, 2024), *available at* https://www.plansponsor.com/ebsas-lisa-gomez-calls-auto-portability-key-to-retirement-security/.

distributions of small balance plan accounts upon their termination from employment, rather than at retirement age. Additionally, where terminated participants' safe harbor IRA balances are consolidated with their retirement plan accounts, auto-portability facilitates the investment of their retirement savings through the investments available in the plan, rather than the default investment of the safe harbor IRA. By helping to consolidate these small balance accounts with terminated participants' new employer-sponsored retirement plans, PSN and the Employee Benefit Research Institute ("EBRI") estimate that hundreds of billions will be retained in the retirement system over time, leading to significant improvements in Americans' retirement readiness.[2]

Certain of our comments described below request that the Department evaluate the Proposed Rule in light of the conditions required by and the structure of auto-portability services contemplated by Department Individual Prohibited Transaction Exemption 2019-02 ("PTE 2019-02"). RCH worked with the Department over the course of several years toward the development of guidance concerning auto-portability services, which culminated in the Department's issuance of PTE 2019-02. RCH and PSN have developed auto-portability services to comply with PTE 2019-02. PSN member recordkeepers have also expended substantial time and resources toward building systems to support auto-portability services meeting the requirements of PTE 2019-02. Finally, hundreds of plans have already enrolled in PSN's auto-portability network based on the understanding that auto-portability services would be provided in the manner contemplated by PTE 2019-02. Plans continue to enroll on a regular basis, and PSN expects that thousands of plans will have joined its network by summer. The temporary basis of PTE 2019-02 did not change the amount of time and resources needed for stakeholder compliance even if the Department granted the exemption on a permanent basis. Moreover, the Statutory Provisions were clearly drafted based on PTE 2019-02, and we do not believe the Statutory Provisions impose a structure for auto-portability programs that is materially different from PTE 2019-02.

However, some provisions of the Proposed Rule diverge significantly from PTE 2019-02 and would necessitate a re-structuring of PSN's auto-portability program by all parties, PSN, RCH, and member recordkeepers. Restructuring may also require that PSN cease providing services to certain plans until plan fiduciaries elect to receive auto-portability services in a different manner. We believe this disruption is entirely avoidable and not required by the Statutory Provisions.

PSN is also concerned that certain provisions of the Proposed Rule would add costs, or impose burdens on stakeholders, including plan fiduciaries, that are not justified by any concomitant benefit nor required by the Statutory Provisions. Other requirements may delay the consolidation of terminated participants' accounts with their new employer retirement plans in a manner that is not required under the Statutory Provisions. We provide detailed comments on these and other aspects of the Proposed Rule below.

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[2] PSN, *Four Key Findings from the New Auto-Portability Simulation* (Dec. 13, 2023), *available at* https://rch1.com/blog/four-key-findings-from-the-new-auto-portability-simulation; EBRI Issue Brief, *The Impact of Auto Portability on Preserving Retirement Savings Currently Lost to 401(k) Cashout Leakage* (Aug. 15, 2019), *available at* https://www.ebri.org/content/the-impact-of-auto-portability-on-preserving-retirement-savings-currently-lost-to-401(k)-cashout-leakage.

II. Comments on the Proposed Rule

A. Accounts with a Value of $1,000 or Less

The Statutory Provisions define an "automatic portability transaction," in relevant part, to include transfers from IRAs "to which amounts were transferred under section 401(a)(31)(B)(i)" of the Code.[3] The Department noted in the preamble to the Proposed Rule that section 401(a)(31)(B)(i) of the Code refers to accounts with a value between $1,000 and $7,000, and therefore the statutory exemption does not expressly refer to transfers of accounts with a value of $1,000 or less.[4] The Department solicited comment on whether it should issue a parallel class prohibited transaction exemption to cover transfers of accounts with a value of $1,000 or less.

We request that the Department include accounts with a value of $1,000 or less within the final version of the Proposed Rule. Such accounts represent a key part of auto-portability services and illustrate why they are needed. PSN calculates that 6.2 million defined contribution plan participants terminate employment with an account value at or below the $7,000 mandatory distribution threshold each year, and approximately 40% of these, or 2.486 million, have an account balance below $1,000. Approximately 80% of terminated participants cash out their account if it has a value below $1,000 because most plans provide for the automatic cash out of these accounts.[5] Thus, extending auto-portability to cover accounts valued at $1,000 or less could lead to the retention of approximately 1.99 million accounts in the system to help provide better retirement security instead of those accounts otherwise cashing out each year.

While an account with a value of $1,000 or less is not substantial in isolation, over the course of a participant's career, the participant may terminate employment multiple times while accumulating a 401(k) plan account balance of $1,000 or less in each employer's plan. The amount that could be saved for retirement readiness by retaining each account in the retirement system through auto-portability will add up over time. We also believe that a participant is more likely to pay attention to a single consolidated retirement account with a larger account balance as opposed to several isolated accounts, each with a value at $1,000 or below, which are easily misplaced and forgotten. Indeed, plan fiduciaries have expressed that terminated participants that are cashed out of the plan with an account value of $1,000 or less often do not cash their distribution checks, meaning they go stale. This is a fundamental challenge to the retirement system that auto-portability addresses. Extending auto-portability services to accounts with a value of $1,000 or less decreases the risks that terminated participants' retirement savings will be forgotten and substantially increases the incentive for plan fiduciaries to participate in the program.

PTE 2019-02 currently covers transfers of accounts with a value of $1,000 or less, and many plans currently participate in PSN's auto-portability program based on the understanding

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[3] Code § 4975(f)(12)(A)(I).
[4] 89 Fed. Reg. at 5636.
[5] Alight, *The Impact of Small Amount Cash-outs on Retirement Income*, 1, 5, *available at* https://www.alight.com/getmedia/2966d9f8-0e3a-4013-9033-a75452487fb7/Auto-portability_report_2021.pdf/

that the accounts will be covered.[6] We note that PSN has set the structure of its auto-portability fees to reduce the impact on small account balances. In this regard, the maximum charge is $30, but accounts valued at less than $600 but greater than or equal to $50 are charged a fee equal to 5% of the account balance. PSN does not charge a fee on accounts with less than $50.

In order to avoid reducing the ability of auto-portability services to preserve terminated participants' retirement savings, the Department should extend coverage for these accounts in connection with the statutory exemption for auto-portability. As the Department noted in the preamble to the Proposed Rule, accounts of $1,000 or less were included in the Department's safe harbor regulations for automatic rollovers to IRAs even though Congress had not directed the Department to cover mandatory distributions of an account of $1,000 or less in the regulations.[7] We believe the Department could, as it did in the safe harbor regulations for automatic rollovers to IRAs, add a separate section in a final version of the Proposed Rule to cover accounts with a value of $1,000 or less rather than issuing a separate class exemption. This would be PSN's strong preference given that the policy rationale for these accounts is the same. However, PSN would support a separate class exemption if the Department determines it is necessary to cover the accounts. If the Department determines that a separate class exemption is necessary, the effective date of the class exemption should coincide with the terminal date of PTE 2019-02 (July 31, 2024) to ensure that transactions are not disrupted for plans that have already elected to participate in the auto-portability program and include accounts with a value of $1,000 or less, and the conditions of such a class exemption should be the same as in the final version of the Proposed Rule.[8]

B. Restrictions on Data Usage

The Proposed Rule would prohibit an auto-portability provider from selling or marketing data related to IRA owners and plan participants.[9] In the preamble to the Proposed Rule, the Department stated that this provision would prohibit "the use of data for any purpose other than the execution of automatic portability transactions or locating missing participants."[10]

PSN agrees with the language included in the Proposed Rule prohibiting sales and marketing of personal data. PTE 2019-02 contains a similar provision, and the Statutory Provisions require that it be a condition of the statutory exemption for auto-portability.[11] However, we disagree with the Department that the prohibition on selling and marketing data is read as a broader restriction on the use of data "for any purpose other than the execution of automatic portability transactions or locating missing participants." The Statutory Provisions authorize, but do not require, the Department to limit the use of data for other purposes.

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[6] *See* PTE 2019-02, 84 Fed. Reg. 37337, 37345 (July 31, 2019).
[7] *See* 29 C.F.R. § 2550.404a-2(d).
[8] The Department also requested comment on whether the final rule should address specific beneficiary issues. 89 Fed. Reg. at 5636. In general, an inherited plan account or IRA cannot be rolled into a plan through an auto-portability transaction. The terms of the plan or the documents governing the IRA, rather than the auto-portability provider, would govern the processing of the account after the death occurs. Therefore, we do not believe specific provisions are necessary or would be helpful.
[9] Proposed Rule § (b)(3).
[10] 89 Fed. Reg. at 5629.
[11] Code § 4975(f)(12)(B)(iii).

However, that Departmental authorization is *separate* from the condition affirmatively prohibiting sales and marketing of data.[12]

Moreover, a restriction on the use of data for any purpose other than the execution of automatic portability transactions or locating missing participants is not workable. The same data must be used to administer plan participant accounts and IRAs. For example, safe harbor IRA providers must be able to use data to establish safe harbor IRAs on behalf of terminated participants enrolled in PSN's auto-portability program who are subject to a plan's mandatory distribution provisions. The data must be used to provide services to the safe harbor IRAs, including, among other things, processing transactions directed by IRA owners, tax reporting, and required minimum distributions. If an individual requests a taxable distribution of their account or a rollover to an IRA, the transaction would not be considered an auto-portability transaction, but the use of data would be required to process the transaction. These services—including services specifically requested by plan participants and IRA owners—could not be performed if data could only be used to execute automatic portability transactions and locate missing participants. Auto-portability would not be possible without the administration of terminated plan participant accounts and safe harbor IRAs, and therefore we do not believe Congress intended to restrict these services.

We also note that data related to IRA owners and plan participants is subject to substantial safeguards under applicable data privacy laws.[13] As required by these laws, PSN provides specific disclosure of, and obtains the consent for, its use of data from each plan fiduciary. There is therefore no need to impose additional restrictions on auto-portability providers' use of data beyond what the Statutory Provisions require.

Additionally, we request that the Department confirm that a finalized version of the Proposed Rule would not prohibit the use of aggregated and anonymized data for any purpose, even if the purpose is unrelated to the execution of automatic portability transactions or locating missing participants. The Proposed Rule would require aggregated and anonymized data to be provided to the Department so that the Department could report the data to Congress.[14] This purpose is, in and of itself, unrelated to the execution of automatic portability transactions or locating missing participants. PSN also intends to use aggregated and anonymized data for research purposes that will enable improvement of its services and help evaluate further opportunities to prevent leakage and position participants for retirement.

C. Effective Date

The Department stated it intends to make the final version of the Proposed Rule effective 60 days from its publication in the Federal Register.[15] However, the Department solicited comment on whether this period of time should be extended "to allow for automatic portability

[12] *Compare* SECURE 2.0 § 120(b) (codified in relevant part at Code § 4975(f)(12)(B)(iii)) *with* SECURE 2.0 § 120(c)(8).
[13] See, e.g., 15 U.S.C. § 6801 et seq; Cal. Civ. Code § 1798.100 et seq.
[14] Proposed Rule § (c)(5).
[15] 89 Fed. Reg. 5624, 5627 (Jan. 29, 2024).

providers and plan fiduciaries to make any changes to automatic portability programs or related contracts or arrangements that may be needed or desired in light of the final rule."[16]

PSN requests that the Department provide at least 270 days to comply with a finalized version of the Proposed Rule. If finalized in its current form, the Proposed Rule would require significant changes to PSN's auto-portability program, including operational updates needing new coding, revisions to the notices and disclosures sent to terminated participants enrolled in the auto-portability program, the adoption of detailed, new written policies and procedures, and revisions to PSN's agreements with each of recordkeepers, RCH, and plan fiduciaries as well as those between recordkeepers and plan fiduciaries. Member recordkeepers would also need to update their systems to comply with a finalized Proposed Rule, which will prove all the more burdensome given the numerous other changes recordkeepers will be required to concurrently implement under SECURE 2.0. All of these changes would need to be implemented while PSN provides auto-portability services to plans and terminated participants who are already enrolled. Moreover, as a result of the required contractual notice period for amendments currently included in PSN's plan agreements, any changes could not be made effective within a 60-day time period. Therefore, the Department should provide at least 270 days from publication in the Federal Register for a final version of the Proposed Rule to become effective.

D. Notice to the Secretary of Labor

The Proposed Rule would require that, within 90 days of operating, an auto-portability provider notify the Department at auto-portability@dol.gov that it is operating as an auto-portability provider and provide the legal name of each business entity relying upon the exemption and any name (e.g., trade or Doing Business As (DBA) name) under which the business entity may be operating.[17] PSN has already been operating for more than 90 days and requests the Department's confirmation that this requirement could be met by providing the notice within 90 days of the effective date of the final version of the Proposed Rule.

E. Fiduciary Acknowledgment

The Proposed Rule would require that an auto-portability provider acknowledge status as a fiduciary under section 4975(e)(3) of the Code with respect to the IRA in connection with the processing of an auto-portability transaction.[18] The acknowledgment would need to be provided (i) to the plan, upon being engaged by a plan, and (ii) in all required notices and disclosures to individuals.

PSN appreciates and agrees with the Department's confirmation that:

> the fiduciary acknowledgment may include a description of the scope of the fiduciary status of the automatic portability provider and may explain that, consistent with Code section 4975(e)(3), the automatic portability provider is not a fiduciary under the Code's definition with respect to any assets or

[16] *Id*.
[17] Proposed Rule § (b)(5)(i).
[18] Proposed Rule § (b)(1).

administration of the plan or IRA with respect to which the automatic portability provider does not (1) have any discretionary authority, discretionary control, or discretionary responsibility, (2) exercise any authority or control, and (3) render investment advice for a fee or other compensation, nor have any authority or responsibility to render such investment advice.[19]

PSN and RCH do not provide services in the capacity as a fiduciary under section 4975(e)(3) of the Code for purposes other than auto-portability transactions and do not intend to acknowledge fiduciary status for such other purposes.

F. Initial Enrollment Notice

The Proposed Rule would require an auto-portability provider to send a notice to IRA owners within 15 days of an IRA being established for a participant under an auto-portability program.[20] The initial enrollment notice would need to, among other things, reference a second notice the auto-portability provider would need to send between 60 and 90 calendar days in advance of executing an auto-portability transaction.[21]

PSN urges the Department to permit the initial enrollment notice to be provided, in a manner consistent with PTE 2019-02, prior to the time an IRA is established for a terminated participant. For background, PTE 2019-02 recognizes two alternative structures for auto-portability services:

- In an "RCH Default IRA Model Transfer," a terminated participant's plan account is rolled over to an RCH safe harbor IRA after termination from employment, and then the assets are transferred to a new plan after it is determined that the terminated participant has opened an account at the new plan.[22] The first notice sent to terminated participants enrolled in this structure of the auto-portability program is the Mandatory Distribution Letter, which is required to be sent when the individual becomes eligible for a mandatory distribution under the terms of the plan.[23]

- In a "Conduit Model Transfer," plan accounts are retained in either the plan or in a non-RCH safe harbor IRA, including a safe harbor IRA overseen by another custodian or an affiliate of the recordkeeper. When it is determined that the terminated participant has opened an account at a new plan in a Conduit Model Transfer, assets are transferred from either the terminated participant's original plan account or a non-RCH safe harbor IRA to the new plan through the conduit of an RCH default IRA.[24] The first notice PTE 2019-02 requires be sent to terminated participants enrolled in this structure of the auto-portability program is the Mandatory Distribution Letter, which is required to be sent when it is

[19] 89 Fed. Reg. at 5628–29.
[20] Proposed Rule § (b)(5)(iii).
[21] Proposed Rule § (b)(5)(iii)(A).
[22] PTE 2019-02 § III(l).
[23] PTE 2019-02 § I(f)(1).
[24] PTE 2019-02 § III(l).

determined that the terminated participant has opened an account at the plan of their new employer.[25]

The option of Conduit Model Transfers respects the fiduciary decision of plan sponsors overseeing small amounts. The auto-portability program is specifically designed to allow these fiduciaries the ability to retain the accounts of terminated participants within the plan until a potential match is identified rather than directing that the accounts be rolled over to a safe harbor IRA upon termination from employment or retain an IRA custodian other than RCH. After identifying a match within a Conduit Model Transfer, plans that retain small accounts rely on the Department's 404a-2 safe harbor to transfer assets to a Conduit Model IRA, where final checks are completed before transferring the individual's assets to the plan of their new employer. Thus, this structure offers important optionality for plan fiduciaries; it should be preserved and equally considered as the Department finalizes its auto-portability guidance.

The timing requirement for the initial enrollment notice in the Proposed Rule would make Conduit Model Transfers unworkable. The Proposed Rule would require the initial enrollment notice be sent *after* the establishment of a safe harbor IRA for an individual but *before* the auto-portability provider has determined that the individual has opened an account with their new employer retirement plan. This timing would prevent plan fiduciaries from deciding to retain the terminated participant account balance within the plan until an auto-portability provider has located a new employer retirement plan account for the terminated participant. If the Proposed Rule were finalized in its current form, PSN would be forced to cease providing services to plans whose fiduciaries decided to participate in this structure of PSN's auto-portability program unless they elect an alternative structure. Likewise, if the notice periods do not consider and remain workable for a Conduit Model Transfer whereby a plan fiduciary elects a non-RCH safe harbor IRA provider, we could expect some recordkeepers to not adopt the auto-portability program or existing recordkeepers to reevaluate their participation.

To preserve Conduit Model Transfers, the Department should allow the initial enrollment notice to be sent prior to the time a terminated participant's account is rolled over to a safe harbor IRA, consistent with the timing of the Mandatory Distribution Letter required by PTE 2019-02. The notice could be sent when the participant becomes subject to a mandatory distribution under the terms of the plan. This timing is consistent with the Statutory Provisions, which authorize the Department to require that an initial enrollment notice be sent "in advance of the notices specified in [section 4975(f)(12)(B)(v) of the Code]," (i.e., the pre-transaction notice). Providing the first notice before a rollover occurs benefits the terminated participant by giving them an opportunity to avoid participation in an auto-portability program and directing the destination of their choosing, including consolidation with another IRA.

The Department could implement the foregoing by changing the wording of section (b)(5)(iii) of the Proposed Rule:

> (iii) Initial enrollment notice. The automatic portability provider shall furnish each individual on whose behalf the individual retirement plan was ***or will be***

[25] PTE 2019-02 § I(g)(1). In PSN's auto-portability program, a Mandatory Distribution Letter is also sent when the individual becomes subject to a mandatory distribution under the terms of the plan.

established an initial notice within 15 calendar days of the individual ~~retirement plan~~'s enrollment or participation in an arrangement that includes the possibility of a future automatic portability transaction executed by the automatic portability provider.

The Department could also clarify that individuals would be deemed to be enrolled in the arrangement when (i) they become subject to a mandatory distribution under the terms of the plan and will be sent the notice required by section 402(f) of the Code, or (ii) if the plan fiduciary has elected to retain terminated participants' account balance in the plan until a match is found, upon termination from employment.

Additionally, the Proposed Rule requires that the initial enrollment notice include the applicable account fees that will be charged in connection with an auto-portability transaction.[26] A substantial period of time could elapse between an individual's enrollment in an auto-portability program and the time the auto-portability provider determines the individual has established an account with their new employer retirement plan. This period of time could span the length of the individual's working years. During the interim period, the applicable fees could change. We therefore request that the requirement to disclose the auto-portability fee in the initial enrollment notice allow for language that may be caveated in the event that the auto-portability fees change.

G. Pre-Transaction Notice

The Proposed Rule would require an auto-portability provider to send a pre-transaction notice between 60–90 days before the auto-portability transaction.[27] The pre-transaction notice would need to include, among other things, a description of the auto-portability transaction, a complete and accurate statement of all fees which will be charged and all compensation which will be received in connection with the transaction, and a statement that the IRA assets will not be transferred for at least 60 calendar days from the date of the notice.[28]

PSN requests that the Department also reconsider the timing requirements for the pre-transaction notice in light of the timing requirement of the corresponding notice in PTE 2019-02, referenced in the preamble to the Proposed Rule as the Consent Letter.[29] Under PTE 2019-02, the timing requirement for the Consent Letter depends on which structure of the auto-portability program is being applied:

- In connection with RCH Default IRA Model Transfers, PTE 2019-02 requires that a Welcome Letter be sent immediately upon the transfer of assets to the safe harbor IRA, and at least 60 days in advance of a rollover into a terminated participant's new employer retirement plan.[30] Next, after it is determined that a terminated participant has opened an account with their new employer retirement plan, a Consent Letter must be sent stating

[26] Proposed Rule § (b)(5)(iii)(B).
[27] Proposed Rule § (b)(5)(iv).
[28] Proposed Rule § (b)(5)(iv)(A).
[29] 89 Fed. Reg. at 5651.
[30] PTE 2019-02 § I(f)(2)(G).

that the terminated participant will have 30 days to opt out of the rollover of their RCH Safe Harbor IRA to their new plan.[31] The rollover into the new plan must be directed "immediately" after the time period for the terminated participant to respond has elapsed.[32] Accordingly, the Consent Letter is currently sent between 30–60 days before the auto-portability transaction, but the Welcome Letter is sent at least 60 days in advance of the transaction.[33]

- In connection with Conduit Model Transfers, after it is determined that an individual has opened an account with their new employer retirement plan, PTE 2019-02 requires a Consent Letter explaining that the individual has 60 days to opt out of the rollover of their former plan account or non-RCH safe harbor IRA to their new employer retirement plan through the conduit of an RCH IRA.[34] Accordingly, the Consent Letter is currently sent between 60–90 days in advance of the auto-portability transaction.

Although the timing requirement for the pre-transaction notice in the Proposed Rule is consistent with the timing requirements for the Consent Letter in connection with Conduit Model Transfers, the pre-transaction notice would need to be sent 30 days earlier than the Consent Letter is required to be sent in connection with RCH Default IRA Model Transfers. Thus, the timing requirement would delay the consolidation of RCH safe harbor IRAs with terminated participants' new employer retirement plan accounts in connection with RCH Default IRA Model Transfers by a month. We do not believe this result aligns with the Congressional and Departmental objectives of ensuring that consolidations of accounts occur in an expeditious manner as possible.[35] Moreover, by delaying rollovers from RCH safe harbor IRAs for a month, individuals will bear fees associated with the RCH safe harbor IRA that would not otherwise apply. The investment vehicle in the RCH safe harbor IRA, pursuant to the Department's 404a-2 safe harbor regulation, is an investment product designed to preserve principal. Delaying the rollover to the individual's new employer account may result in less favorable rates of return. Therefore, the Department should maintain the current process by allowing this notice to be provided "at least 30 calendar days" in advance of the auto-portability transaction.

This requested timing is consistent with the Statutory Provisions. The Statutory Provisions require a pre-transaction notice at least 60 days in advance of an auto-portability transaction but does not mandate that the notice be sent within a maximum number of days.[36] PTE 2019-02's Welcome Letter meets this requirement because it is always sent at least 60 days in advance of a rollover into a terminated participant's new employer retirement plan. The Department could thus mandate in the final version of the Proposed Rule that the Welcome Letter continue to be sent in connection with the structure of its auto-portability program that corresponds with RCH Default IRA Model Transfers.

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[31] PTE 2019-02 § I(f)(4).
[32] PTE 2019-02 § I(p).
[33] PTE 2019-02 also requires that a mandatory distribution letter be sent upon a terminated participant's eligibility for a mandatory distribution under the terms of the plan. PTE 2019-02 § I(f)(1).
[34] PTE 2019-02 § I(g)(2). As stated above, Mandatory Distribution Letters are sent to the individual before the Consent Letter is sent.
[35] Code § 4975(f)(12)(B)(ix)–(x); PTE 2019-02 § I(p).
[36] Code § 4975(f)(12)(B)(v).

H. Accessibility of Notices

The Proposed Rule requires notices to be written in a manner calculated to be understood by the average "intended recipient," including by "taking into account such factors as the level of comprehension and education of the typical intended recipient."[37] Further, the Proposed Rule states that "[c]onsideration of these factors will usually require . . . the use of clarifying examples and illustrations, the use of clear cross references, and a table of contents be included."[38]

The Statutory Provisions, by contrast, require that notices "be written in a manner calculated to be understood by the average person."[39] The Department's application of different language suggests that the average "intended recipient" is different from the "average person," but the Department did not explain how. PSN has no available means of gathering information regarding the level of education and comprehension of individuals enrolled in its auto-portability program. In this way, PSN does not stand in an analogous position to a plan administrator required to prepare summary plan descriptions reasonably calculated to be understood by an average plan participant. A plan administrator is generally the plan sponsor, or is a person associated with the plan sponsor, such as a committee of employees, who has access to information about the level of education of the plan sponsor's employees participating in the plan through the employment relationship. PSN's understanding, however, is that participants of any level of education and comprehension may become subject to a plan's mandatory distribution provisions and enrolled in an auto-portability program due to the modern phenomenon of employees frequently changing jobs.[40] Therefore, we request that the Department conform to the language of the Statutory Provisions.

In addition, PSN disagrees with the suggestion that notices required by the Proposed Rule would need to include cross-references, a table of contents, and examples and illustrations. With the content required by the Proposed Rule, none of the notices will exceed more than a few pages. A table of contents and cross-references are therefore unnecessary. Additionally, the notices will describe what will happen to the terminated participant – that their account will be rolled over to their new employer plan, the specific dollar amount of the transfer, the fees that will be charged, where the money is coming from, and where it is going. The notices also explain how the individual can opt out of participation in the auto-portability program. We believe that these are the key details. Adding other content will only increase the risk that the notice will go unread or that the key details will be missed.[41] Hypothetical examples are unnecessary and create a risk that individuals will become confused about what is occurring. The notices should be as straightforward as possible.

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[37] Proposed Rule § (b)(5)(vi)(A).
[38] *Id*.
[39] Code § 4975(f)(12)(B)(v)(ii).
[40] Caroline Castrillon, *Why Job Hopping Is Going to Continue For The Foreseeable Future*, Forbes (Sept. 3, 2023), *available at* https://www.forbes.com/sites/carolinecastrillon/2023/09/03/why-job-hopping-is-going-to-continue-for-the-foreseeable-future/?sh=177ca2c131a7.
[41] Federal Reserve Bulletin, *Designing Disclosures to Inform Consumer Financial Decisionmaking: Lessons Learned from Consumer Testing*, 21 (Aug. 2011), *available at* https://www.federalreserve.gov/pubs/bulletin/2011/pdf/designingdisclosures2011.pdf ("Too much information can overwhelm consumers or distract their attention from key content.")

I. Foreign Language Requirements

The Proposed Rule would require that, if a required notice is sent to a United States County in which 10% or more of its residents are only literate in a language that is not English the notices sent to individuals in the county must include a statement that the individual can receive a translated version of the notice in that language, the notice must be available in that language, and the auto-portability provider's call center must be able to provide assistance in the language.[42]

PSN strongly disagrees with the imposition of foreign language requirements in the Proposed Rule. Other retirement plan-related disclosures need not meet these foreign language requirements, and the Department did not explain why notices related to auto-portability services should be treated differently.[43] The Department is currently collecting comments on whether foreign language requirements should be imposed in connection with other retirement plan-related notices, and the Department should not impose the requirements in connection with auto-portability before the Department has collected and reviewed any comments.[44] While certain health and disability plan disclosures must meet these requirements, there is a statutory requirement to provide the health and disability plan notices in a "culturally and linguistically appropriate manner."[45] However, the Statutory Provisions do not include a requirement to provide notices in a "culturally and linguistically appropriate manner." The Department lacks the statutory authority to impose this requirement.

We especially disagree with the Department's statement that the cost of meeting this requirement would be "de minimis."[46] The economic analysis in the preamble omits any estimate on the cost of maintaining call center support for the eight languages.[47] PSN and RCH currently offer call center support in Spanish, which costs $3.95/minute, with no limit based on the length of the call. RCH recently spent $262 on one call – an amount that exceeds by far any auto-portability fees that may be charged. Moreover, RCH's provider does not support certain languages the Proposed Rule would be required to cover (e.g., Carolinian, Pennsylvania Dutch), and the fees to support such languages may be greater.

PSN and participating recordkeepers do not have capability to support these requirements and would also have to build a system to track the delivery of notices by county so as to determine whether the notice must include a statement in an applicable non-English language. Such systems do not currently exist in the retirement services industry. The system would also need to ensure the notices are quickly sent so that the timing requirements for the notices in the

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[42] Proposed Rule § (b)(5)(vi)(B)–(C).
[43] Certain foreign language requirements apply in connection with summary plan descriptions, summary annual reports, and defined benefit plan terminations, but the requirements are triggered by the literacy of the plan's participant population, not the population of the county in which the participant resides. *See, e.g.*, 29 C.F.R. § 2520.102-29(c). Moreover, there is no requirement to maintain call center support in a foreign language.
[44] Request for Information—SECURE 2.0 Section 319—Effectiveness of Reporting and Disclosure Requirements, 89 Fed. Reg. 4215, 4218–19 (Jan. 23, 2024).
[45] *See, e.g.*, 29 C.F.R. § 2590.715-2719(e); 26 C.F.R. § 54.9815-2715(a)(5).
[46] 89 Fed. Reg. at 5663.
[47] 89 Fed. Reg. at 5652.

Proposed Rule are met. The Department's economic analysis does not address the costs building such a system would impose.

J. Electronic Delivery of Notices

The Proposed Rule requires that notices and disclosures to participants and individuals be made using methods that satisfy Department regulation section 2520.104b–1(b).[48] The Department solicited comment on whether the Proposed Rule should address electronic disclosure of notices and disclosures under the exemption.[49] In general, PSN believes the same standards for electronic delivery of notices and disclosures that apply under Title I of ERISA should apply to auto-portability services.

We read the Proposed Rule's reference to regulation section 2520.104b–1(b) to encompass and permit an auto-portability provider to rely upon the Department's 2002 and 2020 electronic disclosure safe harbors.[50] These safe harbors are largely premised on the existence of a continuous or pre-existing employment relationship between a plan sponsor and participant, and compliance is only possible in that context. On the other hand, an auto-portability provider would not be able to independently satisfy the safe harbors. For example, an auto-portability provider would not have sufficient information concerning an individual's employment conditions to determine whether an individual is "wired at work."[51] Accordingly, we request that the Department confirm that an auto-portability provider may rely on a plan's existing designations concerning whether notices and disclosures may be sent in compliance with the electronic disclosure safe harbors rather than requiring the auto-portability provider to independently confirm compliance.

K. Verifying Address Information

The Proposed Rule would prohibit an auto-portability provider from enrolling an individual in its auto-portability program unless the provider has a reasonable basis for believing it has a valid address for the individual.[52] In addition, the Proposed Rule would require an auto-portability provider to perform automated address verification searches of (i) National Change of Address records, (ii) two separate commercial locator databases, and (iii) any internal databases maintained by the auto-portability provider.[53]

We believe these address verification requirements stem from a misunderstanding of auto-portability services. As described in the Proposed Rule, PSN performs a monthly locate-and-match service to query participating recordkeepers to determine whether an individual enrolled in the auto-portability program has opened a new account at their new employer's

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[48] Proposed Rule § (b)(5)(vii).
[49] 89 Fed. Reg. at 5632.
[50] 29 C.F.R. §§ 2520.104b–1(b); 2520.104b–31. The economic analysis accompanying the Proposed Rule assumes that the vast majority of disclosures would be sent electronically. 89 Fed. Reg. at 5649. However, PTE 2019-02 requires that disclosures be sent through first class mail. PTE 2019-02 § I(e). Therefore, PSN's operations are currently configured to deliver notices and disclosures through mail rather than electronically.
[51] 29 C.F.R. § 2520.104b-1(c)(2)(i).
[52] Proposed Rule § (b)(5)(vii).
[53] Proposed Rule § (b)(6).

retirement plan. This service is, in and of itself, a means of locating the individual's address. When it is determined that the individual has opened a new employer retirement plan account, PSN sends notices to the individual at the address maintained in the records of the new employer retirement plan. That address—the address maintained by the plan for which the individual is an active participant (to which the individual has recently been making contributions)—is clearly valid. When an individual is initially enrolled, PSN applies the address maintained in the records of the plan maintained by the employer from which the individual was terminated—the same address to which the notice required by section 402(f) of the Code would be sent in the ordinary course of the plan's administration. In both cases, PSN applies the address used by the plan, and there is a concurrent regulatory obligation for the plan to take steps to maintain valid contact information. Thus, we do not believe that the imposition of address verification requirements on an auto-portability provider supplies an added benefit.

Moreover, these search requirements would require PSN to obtain and hold more enrolled individuals' personal data, and create administrative burdens in connection with Conduit IRA Model Transfers where PSN and RCH do not provide account administration services. PSN limits the amount of personal data it obtains regarding the individuals enrolled in the Conduit IRA Model structure until there is a potential match with a new employer retirement plan account.[54] PSN obtains the full set of personal data associated with the individual to confirm the match only when there is potential match. PSN's decision to limit the amount of personal data it collects until the data is needed reflects data privacy principles.[55] However, in order to perform the searches required by the Proposed Rule, PSN would be required to collect and maintain more sensitive personal data regarding the individuals before a possible match is found (and even if a match is never found). Additionally, the search requirement could lead to scenarios where the address maintained in PSN's records for an individual is different from the address maintained in the records of the recordkeeper for the terminated participant's plan account or non-RCH safe harbor IRA, and the mismatch may require manual administrative review to resolve and delay PSN's ability to process automatic portability transactions.

Lastly, we disagree with the Department's statement in the economic analysis set forth in the preamble to the Proposed Rule that these requirements will "not add additional cost" as compared to complying with PTE 2019-02.[56] RCH represented, as stated in the preamble to PTE 2019-02, that it "will engage in its search process upon receiving returned mail described as undeliverable mail from the U.S. Post Office."[57] As a result, the Department declined to impose specific address verification requirements and instead revised section I(r) to require that "RCH takes all prudent actions necessary to reasonably ensure that the Plan's participant and beneficiary data is current and accurate, and that the appropriate participants and beneficiaries, in

[54] As noted in the preamble to PTE 2019-02, recordkeepers (rather than PSN or RCH) may be relied on to deliver notices and disclosures required to be sent before it is determined there is a match, because they already service the account. 84 Fed. Reg. at 37338–40. Therefore, PSN does not need to obtain the individual's address before there is a potential match.

[55] *See* VA ST § 59.1-578(A)(1); Bernard Marr, *Why Data Minimization Is an Important Concept in The Age of Big Data*, Forbes (Mar. 16, 2016), *available at* https://www.forbes.com/sites/bernardmarr/2016/03/16/why-data-minimization-is-an-important-concept-in-the-age-of-big-data/?sh=6614adcc1da4.

[56] 89 Fed. Reg. at 5654.

[57] 84 Fed. Reg. at 37343.

fact, receive all the required notices and disclosures."[58] The Proposed Rule, on the other hand, would require that address verification searches be performed even with no indication that an address is not valid. Conducting searches regardless of the accuracy of the underlying data will cause substantial administrative burden and costs.[59] Therefore, we request that these requirements be removed or conformed to the language of section I(r) of PTE 2019-02.

L. Designation of Plan Official

The Proposed Rule would require that amounts rolled into a plan be invested in accordance with the participant's current investment election under the plan or, if no election is made or permitted, in the plan's qualified default investment alternative under 29 CFR 2550.404c-5 or in another investment selected by a plan fiduciary.[60] Additionally, an auto-portability provider would be required to ensure that the plan designates an official responsible for monitoring whether amounts rolled in are invested as required.[61]

The plan official designation requirement is overly burdensome and should be removed. This condition, in effect, imposes a requirement on participating plan fiduciaries that is outside of an auto-portability provider's control. In this regard, PSN could require participating plans to represent that such an official has been designated, but it would have no reasonable means of confirming that such designation has in fact taken place. Further, plan officials, once designated, will turn over from time to time, and PSN would have no way of knowing whether any particular plan official still remains with a plan sponsor. In addition, as stated above, many plans have already begun receiving auto-portability services, and PSN would face significant challenges in ensuring that plan officials have been appointed for these plans because the initial contracting process has already occurred.

Moreover, this requirement adds further burdens on plan fiduciaries not imposed by current law that may inhibit a plan from adopting the auto-portability program. We believe it is incongruous for the Department to require the appointment of a specific official to monitor the investment of rollover contributions in connection with auto-portability programs when there is no similar requirement to appoint a plan official to monitor the investments of contributions made into a plan for other reasons. Most rollover contributions into a plan in connection with auto-portability programs will not exceed $7,000. However, the contributions of participants subject to a plan's automatic enrollment provisions can easily exceed this amount per year, and there is no similar requirement to designate a plan official to monitor these contributions.

Finally, the requirement to designate a plan official to monitor the investment of contributions does not provide any added protections over the pre-existing requirement in PTE 2019-02, which already requires that contributions be invested in accordance with the participant's current investment election under the plan or, if no election is made or permitted, in the plan's qualified default investment alternative or in another default investment selected by a

[58] PTE 2019-02 § I(r).
[59] We also note that other safe harbor IRA providers that may utilize PSN for purposes of connecting to auto portability may not perform these services and will incur additional costs.
[60] Proposed Rule § (b)(7).
[61] *Id*.

plan fiduciary.[62] The Department should permit plan fiduciaries to meet this requirement by applying the same procedures they use to ensure other contributions are properly invested rather than mandating a specific plan official be appointed. Imposing a unique fiduciary requirement in connection with auto-portability that may not be consistent with the plan's procedures for monitoring other types of contributions will only serve as a deterrent to plans' adoption of auto-portability, which is not consistent with Congressional objectives. This requirement should be removed.

M. Website Requirements

The Proposed Rule would codify the Statutory Provisions' requirement for an auto-portability provider to maintain a website containing a list of recordkeepers for each plan with respect to which the provider carries out auto-portability transactions, and a list of all fees paid to the auto-portability provider.[63] In addition, the Proposed Rule would add that the website must describe the number of enrolled plans and participants covered by each recordkeeper.[64]

The Department did not explain what benefit publicizing the number of enrolled plans and participants covered by each recordkeeper would provide. While PSN would have available the number of terminated participants of each plan, who would be enrolled in its auto-portability program, it would be required to build a process with each recordkeeper to obtain the number of active participants in order to meet this requirement. Moreover, unlike the number of participating recordkeepers and the auto-portability fees, the number of participating plans and participants would be subject to change on a daily basis. Because of the administrative burden of maintaining the numbers, we request that this requirement be removed. However, if the Department determines it is necessary to retain this requirement, it should not require that the information be refreshed on more than an annual basis.

N. Audit Requirements

The Proposed Rule would require an auto-portability provider to obtain an annual compliance audit, specify the timing for the completion of the audit, detail the information the auditor would need to include in its audit report, and mandate that the auto-portability provider certify under penalty of perjury that it has reviewed and addressed, corrected, or remedied any noncompliance or inadequacy identified in the audit report.[65] Among other things, the Proposed Rule would require that the audit report include information the Department would use in completing its tri-annual report to Congress on auto-portability.[66] The audit report and certification would need to be completed within 180 days after the end of the annual period to which the audit relates, and then submitted to the Department within 30 days of completion.[67]

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[62] PTE 2019-02 § I(j).
[63] Code § 4975(f)(12)(B)(xii); Proposed Rule § (d)(1)(i)–(ii).
[64] Proposed Rule § (d)(1)(iii).
[65] Proposed Rule § (c)(1).
[66] Proposed Rule § (c)(5).
[67] Proposed Rule § (c)(7).

PSN requests that the Department revise paragraph (c)(3) of the Proposed Rule to clarify that participating recordkeepers will not be required to grant access to the auditor or provide information in connection with the Proposed Rule's audit requirements. The Department stated in the preamble that it expects an auto-portability provider to obtain information from recordkeepers as a condition of its services.[68] However, recordkeeper participation in an auto-portability program is purely voluntary, and a recordkeeper must devote significant time and resources to integrate auto-portability with the services it provides to participating plans. Requiring that recordkeepers annually provide additional information in connection with an audit will only add to the costs of participation in an auto-portability program. It will deter some recordkeepers from participating, which would limit the ability of auto-portability services to help preserve Americans' retirement savings. Therefore, the audit should be limited to the information the auto-portability provider maintains in the course of providing auto-portability services. To the extent the Statutory Provisions require the Department to collect and present information to Congress, such as the number of IRAs transferred to a designated beneficiary, the Department could meet this requirement by collecting data within an auto-portability provider's control and extrapolating to the total number of enrolled accounts using sampling methods.

Additionally, we believe the requirement to include the certification under penalty of perjury is unnecessary. In connection with the Department's changes to its procedures for processing requests for prohibited transaction exemptions, the Department initially proposed requiring that statements from independent fiduciaries and appraisers be signed under penalty of perjury but removed that requirement from the final rule. 89 Fed. Reg. 4662, 4674 (Jan. 24, 2024). Additionally, PTE 2020-02 requires that a senior officer of a financial institution certify that it has reviewed the financial institution's policies and procedures for compliance with PTE 2020-02 but does not require a statement to be signed under penalty of perjury. *See* 88 Fed. Reg. 75979, 76001 (Nov. 3, 2023). There is nothing unique about auto-portability services to require a statement under penalty of perjury.

Further, the Department should specify that the audit report will be considered confidential and not be subject to public disclosure. Pursuant to the Proposed Rule, an auto-portability provider will be required to adopt policies and procedures covering significant portions of its operations, and those policies and procedures would need to be reviewed in connection with the audit. The audit report may, as a result, contain trade secrets and confidential commercial and financial information exempt from public disclosure under the Freedom of Information Act.[69] The audit report may also include personally-identifiable information.

Finally, PSN requests more time to submit the completed audit report to the Department after its completion. The Proposed Rule would require the submission of the audit report and

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[68] 89 Fed. Reg. at 5634.

[69] 5 U.S.C. § 552(b)(4); *see also* United States Dep't of Justice, DOJ Guide to the Freedom of Information Act, Exemption 4 at 4 (2019 ed.), *available at* https://www.justice.gov/oip/page/file/1207891/download ("Courts have little difficulty in regarding information as 'commercial or financial' if it relates to business or trade."). Operational and technical approaches are thus considered a trade secret or commercial or financial information. *Forest Cnty. Potawatomi Cmty. v. Zinke*, 278 F. Supp. 3d 181, 200 (D.D.C. 2017); *Hecht v. U.S. Agency for Int'l Dev.*, No. CIV.A. 95-263-SLR, 1996 WL 33502232, at *10 (D. Del. Dec. 18, 1996).

certifications within 30 days of completion of the audit report.[70] Under the certification requirement, the auto-portability provider would thus have 30 days to review, address, correct, or remedy any potential issue of noncompliance or inadequacy, or to develop a written plan to address any such issues.[71] This amount of time is not sufficient. In fact, the Department provided financial institutions relying on PTE 2020-02 with six months to certify results of its internal review after the end of the annual period under review.[72] Expecting an auto portability provider to submit certifications related to the audit report conducted by a third party is simply not enough time. The Department should revise paragraph (c)(7) of the Proposed Rule to provide 90 calendar days for submission of the materials to the Department.

O. Corrective Actions by the Department

The Proposed Rule would allow the Department to require the auto-portability provider to submit to supplemental audits and corrective actions, including a temporary prohibition from relying on the exemption if the auto-portability provider or an affiliate is found to be:

- engaging in a systematic pattern or practice of violating any provision of the exemption;
- intentionally violating any provision of the exemption;
- providing materially misleading information to the Department, Treasury Department, or the auditor in connection with auto-portability transactions; or
- the subject of a foreign or domestic criminal conviction involving the auto-portability program or any felony involving larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, misappropriation of funds or securities, or conspiracy to commit any such crimes or a crime in which any of the foregoing crimes is an element.[73]

We request that the Department refrain from reserving authority to prohibit an auto-portability provider from relying on the exemption. The disruption and confusion a temporary prohibition would cause would outweigh any protective benefits. For example, an individual might receive the pre-transaction notice contemplated by the Proposed Rule and understand that if they take no action, their account will be rolled over to their new employer's retirement plan. The individual might then take no action, expecting the account to be rolled over. However, if the auto-portability provider is prohibited from relying on the exemption, then, contrary to the individual's expectation, the rollover would not occur. Even if the prohibition later expires, then in certain cases, such as if the individual stops working at their new employer, then the rollover to the plan may never occur. The account could then easily be forgotten about and abandoned—a problem that auto-portability services are intended to solve.

[70] Proposed Rule § (c)(7).
[71] Proposed Rule § (c)(8).
[72] PTE 2020-02 § II(d)(5)
[73] Proposed Rule § (c)(10).

Moreover, temporary prohibitions would raise significant operational challenges and concerns. For example, if an auto-portability provider is under a temporary prohibition, it would not be clear whether the initial enrollment notice should still be sent to individuals who would have been enrolled in the auto-portability program but for the temporary prohibition. If the initial enrollment notice should not be sent, then it would not be possible to process an auto-portability transaction for that individual at any point in time.

We also do not believe that the Proposed Rule provides adequate due process protections for an auto-portability provider. Traditional notions of due process require that decisions be made by an independent, disinterested decision-maker. However, under the Proposed Rule, the Department would be acting as both judge and jury as to the question of whether an auto-portability provider has engaged in the types of misconduct justifying a prohibition. In addition, the Proposed Rule does not specify any process by which the Department would determine whether an auto-portability provider should be prohibited from reliance on the exemption. The categories of misconduct are subjective in nature and would provide the Department with broad discretion in making the determination. For instance, the Department would have significant discretion to determine when an auto-portability provider has engaged in a "systematic pattern or practice" of violating the terms of the Statutory Provisions or the final rule. Among other things, the Department would decide (i) how many violations would cause a "pattern or practice" of violations to be viewed as "systematic;" (ii) how linked the violations would need to be to constitute a "pattern or practice;" and (iii) whether the auto-portability provider's compliance policies, employee training, or other factors would be treated as mitigating factors in determining whether a systematic pattern or practice of violations has occurred. The categories of misconduct appear to come from PTE 2020-02, but PTE 2020-02 was only recently granted and is still being changed. How the Department interprets those provisions is still unclear. This uncertainty puts the viability of auto-portability services at risk.

We recognize that the Department may, in extreme cases, have an interest in barring an auto-portability provider from providing services. In such cases, the Department could apply its well-established enforcement mechanisms to obtain a judgment in court barring the auto-portability provider from providing services to ERISA-covered plans. The auto-portability provider would then be provided with adequate due process. However, the Department should not be permitted to disqualify an auto-portability from reliance on the statutory exemption through informal means.

P. Recordkeeping Requirement

The Proposed Rule would require an auto-portability provider to maintain records sufficient to demonstrate compliance with the Statutory Provisions and the final regulation for a period of six years after the auto-portability transaction has occurred.[74]

PSN requests that this provision be revised to mandate retention of the document for a period of six years from the date the record was generated or six years from the condition associated with the record was required to be met. The Proposed Rule requires the generation of records at the time an individual is enrolled in an auto-portability program (e.g., the initial

[74] Proposed Rule § (f).

enrollment notice) and after the auto-portability transaction has occurred (e.g., the post-transaction notice). However, before an auto-portability transaction can occur, the time it will take for an auto-portability provider to determine that the enrolled individual has established an account with a new employer plan is driven by factors outside of the auto-portability provider's control. The factors include: (i) whether the individual seeks employment after being terminated from the original job, and when, and (ii) whether the individual participates in a new employer retirement plan that has joined the auto-portability program. The intervening period between initial enrollment and the determination that the individual has an account with a new employer plan could stretch to dozens of years (i.e., the span of the individual's working years). It is unreasonable to expect that records will be maintained for such a long period of time.

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As stated above, we appreciate all the work the Department has done on auto-portability. If you have questions about any of our comments, or if we can be of any further assistance in connection with the Proposed Rule, please feel free to contact us.

Respectfully submitted,

Portability Services Network, LLC
And Its Members:

Retirement Clearinghouse LLC

Fidelity Workplace Services, LLC

Alight Solutions, LLC

The Vanguard Group, Inc.

Empower Retirement LLC

Teachers Insurance and Annuity Association of America

Principal Life Insurance Company