



AMERICAN BENEFITS COUNCIL

December 20, 2018

Submitted via email at e-oed@dol.gov

Employee Benefits Security Administration (EBSA)
Office of Exemption Determinations
U.S. Department of Labor
200 Constitution Ave, NW, Suite 400
Washington DC 20210

Re: Application D-11938

Dear Office of Exemption Determinations:

The American Benefits Council appreciates the opportunity to comment on the proposed prohibited transaction exemption related to auto portability. We commend the Department of Labor for issuing the Advisory Opinion and seeking comment on a prohibited transaction exemption (“Proposed Exemption”) for the Retirement Clearinghouse on its proposed auto portability system (the “RCH Program”). We believe this is an excellent first step in helping ensure that retirement plan assets follow the terminating employee to their new employer and/or reuniting lost benefits with the participant. The latter could have a significant effect on the missing participants’ problem.

The American Benefits Council (the “Council”) is a national nonprofit organization dedicated to protecting and fostering privately sponsored employee benefit plans. The Council’s approximately 400 members are primarily large multistate U.S. employers that provide employee benefits to active and retired workers and their families. The Council’s membership also includes organizations that provide employee benefit services to employers of all sizes. Collectively, the Council’s members either directly sponsor or provide services to retirement and health plans covering virtually all Americans who participate in employer-sponsored benefit programs. In the interest of full disclosure, the Retirement Clearinghouse is currently a member of the Council though it does not have the ability to determine the final contents of this letter.

We understand from the Advisory Opinion that the RCH Program “is designed to help employees who may have multiple job changes over their career consolidate small accounts held in a prior employer’s individual account plan and rollover IRA into a new employer’s 401(k) or other defined contribution individual account plan. The objective of the RCH Program is to improve overall asset allocation, eliminate duplicative fees for small retirement savings accounts, and reduce leakage of retirement savings from the tax-deferred retirement saving system.”

We further understand that the RCH Program involves “(1) automatic rollovers of mandatory distributions under Code section 401(a)(31)(B) and account balances from terminated defined contribution plans into default IRAs pursuant to 29 CFR 2550.404a-2 and 29 CFR 2550.404a-3, respectively, and (2) the subsequent automatic roll-in of funds in such default IRAs to an individual account plan maintained by a new employer when the IRA owner changes jobs. These RCH Program portability services use a ‘locate, match, and transfer’ technology that involves periodic queries of cooperating record-keepers’ systems to ascertain if the IRA owner has become a participant in an individual account plan through re-employment and then effects a transfer of funds from the individual’s IRA to that new plan.”

Under the Advisory Opinion, we understand that RCH would become a fiduciary with respect to the movement of the participant’s assets from an RCH IRA or another safe harbor IRA. Thus, a prohibited transaction exemption would be necessary for any fees that RCH collects in connection with communications, the maintenance of the RCH IRA and the transfer of retirement assets from the RCH IRA or other safe harbor IRA. The Council would favor such an exemption, provided appropriate safeguards for the participant are included. The proposed exemption appears to include sufficient safeguards for participants, including an extensive set of notice requirements.

The Proposed Exemption is not available for relief with respect to existing safe harbor IRAs. However, there are currently estimated to be millions of safe harbor IRAs that might benefit from an automated transfer to an ERISA-covered employee benefit plan with an active participant. Since the Department is also interested in reuniting missing participants with their retirement assets, we recommend that the Department expand the final exemption to permit the use of automatic portability with respect to those IRAs, provided the plan sponsor elects to accept the roll-in.

The Council and its members share your goal of ensuring that workers receive the benefits to which they are entitled and believe that auto portability is a good first step in allowing those benefits to automatically follow the worker. If you have any questions, or if further information would be helpful, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "Jan Jacobson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Jan M. Jacobson
Senior Counsel, Retirement Policy
American Benefits Council