

**MEMO# 17344**

April 2, 2004

## **INSTITUTE LETTER TO DOL IN RESPONSE TO PROPOSED REGULATIONS ON AUTOMATIC IRA ROLLOVERS**

[17344] April 2, 2004 TO: PENSION MEMBERS No. 24-04 PENSION OPERATIONS ADVISORY COMMITTEE No. 29-04 RE: INSTITUTE LETTER TO DOL IN RESPONSE TO PROPOSED REGULATIONS ON AUTOMATIC IRA ROLLOVERS Yesterday, the Institute submitted the attached letter in response to the Department of Labor's proposed safe harbor regulations on the automatic rollover provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"). As you are aware, EGTRRA's automatic rollover provisions require retirement plans with cash-out rules to automatically roll over certain balances (generally between \$1,000 and \$5,000) into an IRA, unless the participant elects otherwise. The letter makes the following points. First, the Department should clarify the scope of its regulatory safe harbor guidance in light of the statutory fiduciary relief provided in section 404(c)(3) of ERISA. That provision, among other things, provides that a participant will be treated as having exercised control over assets in an automatic rollover account 1 year after the rollover is made. Second, the Department should eliminate the restriction in the proposed safe harbor that limits IRA maintenance fees to the income earned by the IRA. The letter observes that the administrative and systems difficulties raised by the restriction may discourage many financial services firms from offering automatic rollover accounts. The letter therefore urges that the only safe harbor fee limitation be the other limit set forth in the proposed regulations — that fees and expenses may not exceed those charged by the IRA provider for comparable IRAs. Finally, because the implementation efforts to comply with regulatory guidance (including forthcoming guidance from the Treasury Department and the IRS) will be significant, the Department should delay the effective date of the automatic rollover rules to 1 year following the Department's issuance of final safe harbor regulations. Thomas T. Kim Associate Counsel Attachment (in .pdf format) Note: Not all recipients receive the attachment. To obtain a copy of the attachment, please visit our members website (<http://members.ici.org>) and search for memo 17344, or call the ICI Library at (202) 326-8304 and request the attachment for memo 17344.