

MEMO# 15741

March 12, 2003

INSTITUTE LETTER ON DOL'S REQUEST FOR INFORMATION CONCERNING AUTOMATIC IRA ROLLOVERS

[15741] March 12, 2003 TO: PENSION MEMBERS No. 12-03 PENSION OPERATIONS ADVISORY COMMITTEE No. 15-03 RE: INSTITUTE LETTER ON DOL'S REQUEST FOR INFORMATION CONCERNING AUTOMATIC IRA ROLLOVERS The Institute recently filed the attached letter with the Department of Labor with regard to its request for information (RFI)¹ on EGTRRA's automatic rollover provision. Under section 657 of EGTRRA,² qualified plans must establish a default mechanism under which amounts subject to the provision are automatically rolled over to an IRA designated by the plan administrator, unless the participant affirmatively elects to have the amount transferred to another vehicle or receive it directly. The Department's RFI invited public comment on the development of safe harbor guidance under this statutory provision.³ The letter makes the general point that legal and operational difficulties should be minimized in the regulatory implementation of this provision. To the extent that the automatic rollover regulations are burdensome, the letter notes that financial institutions would be discouraged from serving as IRA providers, which, in turn, would reduce the choices available to plan sponsors to the detriment of plan participants. The specific points made in the letter are as follows. Safe Harbor Standards. The letter recommends that the Department establish multiple categories of safe harbor investments, rather than a single type of investment that may not be suitable for all plans or participants. Specifically, the safe harbor categories recommended in the letter are: (1) low risk investment vehicles, such as money market funds; (2) a plan's default investment option, if applicable; (3) investments to which plan investments can be mapped; and (4) a diversified investment vehicle, such as a fund designed to be the complete investment program of a prudent investor (e.g., balanced funds, lifecycle funds). Where the employer 1 See Institute Memorandum to Pension Committee No. 1-03 and Pension Operations Advisory Committee No. 1-03, dated January 7, 2003. 2 See Institute Memorandum to Pension Members No. 21-01 and Pension Operations Advisory Committee No. 35-01, dated May 31, 2001. 3 Section 657(c) of EGTRRA directs the Department of Labor to prescribe safe harbor guidance under which the designation of institutions and investment of funds would be deemed to satisfy the fiduciary requirements of section 404(a) of ERISA. 2 selects these investments, the letter asks that the Department provide fiduciary relief commencing from the point of distribution from the plan. In addition, the letter recommends that all IRA trustees and custodians should qualify as safe harbor institutions, as limiting safe harbor entities to a subset of IRA providers effectively would prevent qualified firms from offering IRAs under the automatic rollover rules — ultimately harming IRA owners. In response to the RFI's questions on fees and costs, the letter urges that any safe harbor guidance avoid dictating specific standards with regard to the types and levels of fees relating to IRA

providers or their products. In lieu of specific fee limitations, the letter suggests that the Department, consistent with its prior guidance on payroll-deduction IRAs, could provide that fees and costs associated with IRAs established under the automatic rollover rules would be appropriate so long as they are the same as those charged to the general public. Legal and Operational Issues. The letter identifies a number of issues that require regulatory clarification under the automatic rollover rules. As noted in the letter, many of these concerns arise because accounts covered by the rules will likely belong to individuals whom the employer would have difficulty finding. Because some of these matters fall outside of the Department's regulatory authority, the letter asks that the Department work in close cooperation with other agencies to resolve them. First, given that many individuals with accounts subject to the rules will be difficult to locate, the letter seeks clarification on how IRAs may be established where the employer, not the employee, is opening the account, as well as express guidance that the individual would be bound by the terms of the IRA document and related materials. Second, the letter requests relief from the current disclosure statement and governing instrument delivery requirements for IRAs established under the automatic rollover rules. Third, the letter seeks clarification on how the "seven-day revocation period" would apply under these circumstances. Fourth, the letter identifies various anti-money laundering issues that may arise in the context of automatic rollovers and requests that the Department work with other agencies to grant appropriate relief. Lastly, the letter asks whether prohibited transaction relief is needed in situations where a plan sponsor is selecting itself or an affiliate as the IRA provider for its employees. Transition Issues. The letter concludes by urging the Department to provide a sufficient transition period to implement the new rules and to seek additional comments in connection with the issuance of proposed regulations and/or prior to their release. Thomas T. Kim Associate Counsel 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 15741, or call the ICI Library at (202) 326-8304 and request the attachment for memo 15741. Attachment (in .pdf format)