

VIA E-RULEMAKING PORTAL (www.regulations.gov)

October 23, 2015

Kimberly S. Reese
Bureau of Fiscal Service
Department of the Treasury
200 Third Street, Room 402
Parkersburg, WV 26106

Re: FISCAL-2015-0001: Request for Public Comment on the Process for Transferring myRA Account Balances to Private Sector Roth IRAs

Dear Ms. Reese:

On August 12, 2015, the U.S. Department of the Treasury's Bureau of Fiscal Service (Treasury) published its request for public comment on the process for transferring myRA account balances to private sector Roth IRAs (Request for Comment).¹ Specifically, Treasury requested comment on transferring myRA account balances of account holders that do not provide transfer instructions and communicating with account holders about available private sector options to which they can transfer their myRA account balances.

The Financial Services Institute² (FSI) appreciates the opportunity to comment on this important proposal. We applaud Treasury's efforts to encourage individuals to save for retirement. We believe that it is critical for every American to have access to a qualified, independent financial advisor that helps them save for a dignified retirement. We support Treasury's interest in encouraging myRA account holders to transfer their account balances to a private sector Roth IRA provider. However, we believe the automatic transfer of these accounts raises questions regarding the application of existing securities laws and regulations. We discuss these concerns in greater detail below.

Background on FSI Members

The independent financial services community has been an important and active part of the lives of American investors for more than 40 years. In the U.S., there are approximately 167,000 independent financial advisors, which account for approximately 64.5% percent of all producing registered representatives. These financial advisors are self-employed independent contractors, rather than employees of Independent Broker-Dealers (IBD).

¹ 80 Fed. Reg. 48417 (Aug. 12, 2015).

² The Financial Services Institute (FSI) is an advocacy association comprised of members from the independent financial services industry, and is the only organization advocating solely on behalf of independent financial advisors and independent financial services firms. Since 2004, through advocacy, education and public awareness, FSI has been working to create a healthier regulatory environment for these members so they can provide affordable, objective financial advice to hard-working Main Street Americans.

FSI member firms provide business support to financial advisors in addition to supervising their business practices and arranging for the execution and clearing of customer transactions. Independent financial advisors are small-business owners who typically have strong ties to their communities and know their clients personally. These financial advisors provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations and retirement plans with financial education, planning, implementation, and investment monitoring. Due to their unique business model, FSI member firms and their affiliated financial advisors are especially well positioned to provide middle-class Americans with the financial advice, products, and services necessary to achieve their investment goals.

Discussion

myRAs are retirement savings accounts that invest exclusively in a newly-developed U.S. retirement savings bond. The bond is designed as an add-on security, whereby the amount of the bond grows with participant contributions plus accrued interest. Individuals can continue to participate in myRA until their account balance reaches \$15,000, referred to as the “Transfer Threshold.” Once an individual reaches the Transfer Threshold, the bond will stop earning interest. At such time, the account will be closed and the bond will be redeemed.

Treasury would like to encourage individuals to proactively transfer their myRA account balances to a private sector Roth IRA provider at, or prior to reaching, the Transfer Threshold. However, in the Request for Comment Treasury explained that some account holders may not actively select a firm to receive their myRA account balances. In such scenarios, Treasury would like to develop a process to transfer automatically the myRA account balances to a firm, or firms, that offer Roth IRAs.

In the Request for Comment, Treasury proposes to develop a process whereby it would open a Roth IRA on behalf of a myRA account holder at a designated provider. Treasury would then transfer the myRA account balance to the newly opened Roth IRA. Both Treasury and the Roth IRA provider would notify the account holder of the transfer.

FSI supports Treasury’s efforts to encourage myRA account holders to transfer account balances to Roth IRAs offered by private sector providers. FSI members have significant experience and expertise in helping Main Street Americans save for retirement. However, the automatic transfer process proposed by Treasury seems to conflict with existing laws and regulations applicable to broker-dealers. We question whether a broker-dealer would be able to open a Roth IRA via an automatic transfer and still comply with applicable anti-money laundering (AML), Know-Your-Customer (KYC), and other relevant FINRA rules. Additionally, we have concerns about the impact on several other existing or pending regulatory requirements on the ability to serve automatically transferred myRA account balances.

I. Broker-Dealer Account Opening Requirements

In order to open an account with a registered broker-dealer, customers are typically required to complete a new account form. This form requests a substantial amount of information about the account holder in order to comply with relevant rules and regulations. Below please find a brief description of some of these requirements.

- FINRA Rule 2090 requires each broker-dealer to use “reasonable diligence” in regard to the opening of every account to learn the “essential facts” concerning every customer. The essential facts include, but are not limited, those required to effectively service the customer’s account, understand the authority of each person acting on behalf of the customer, and comply with applicable laws, regulations and rules.
- FINRA Rule 2111 requires each broker-dealer to have a reasonable basis to believe that a recommended security is suitable for the customer based on the information obtained through the reasonable diligence of the firm to ascertain the customer’s “investment profile.” As such, during account opening broker-dealers typically request a variety of information necessary to ascertain the customer’s “investment profile.” This information includes, but is not limited to, age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, and risk tolerance.
- FINRA Rule 4512 requires broker-dealers to maintain for every account the customer’s name and residence, whether the customer is of legal age, the names of any associated persons assigned responsibility for the account, and an attestation noting that the account has been accepted in accordance with the member’s policies and procedures for the acceptance of accounts.
- SEC Rule 17a-3(a)(17) requires broker-dealers to maintain for each account with a natural person as a customer or owner a record containing the customer’s name, tax identification number, address, telephone number, date of birth, employment status, annual income, net worth, and the account’s investment objectives.
- FinCEN and the SEC, in accordance with the USA PATRIOT Act’s amendments to the Bank Secrecy Act, require all broker-dealers to maintain a customer identification program (CIP) to verify the identity of any person seeking to open an account. The CIP rule requires broker-dealers to maintain procedures to enable the firm to form a reasonable belief that it knows the true identity of a customer. A broker-dealer can use documentary or non-documentary methods to verify a customer’s identity.

As a result of these requirements FSI members maintain policies and procedures that prohibit opening an account prior to acceptance and review of all relevant information. In addition to maintaining procedures to comply with all of these regulatory obligations, broker-dealers also typically require IRA holders to execute arbitration agreements as well as IRA Adoption Agreements. As such, FSI members would need to ensure that all relevant agreements were executed and all applicable procedures were followed prior to approving a Roth IRA account for an automatic transfer on behalf of a myRA account holder.

We recommend that Treasury engage all relevant stakeholders, including financial industry regulators and private sector Roth IRA providers, to develop safe harbor protocols for handling automatic transfers. Such a safe harbor could include allowing broker-dealers to satisfy all applicable regulatory requirements by relying on representations and certifications made by Treasury regarding customer information. Additionally, we recommend Treasury consider coordinating with the relevant securities regulatory bodies to establish safe harbors that allow

firms to select certain default investment options preapproved by Treasury upon automatic transfer of an account. These safe harbors would provide legal certainty to broker-dealers that they could not be subject to either a regulatory or private action related to the investment of transferred myRA balances in the appropriate default investment option. Default investment options should be determined based on relevant characteristics of account holders such as age and account balance. Additionally, the default investment options should be relatively safe investments with minimal fees. It is important to ensure that fees do not erode the small amount of savings maintained by these account holders.

II. Other Legal and Regulatory Requirements

A. DOL Conflicts of Interest Proposal will Severely Impede the Benefit of myRA

As Treasury is aware, the Department of Labor (Department) recently proposed a rule amending the definition of fiduciary under ERISA.³ Additionally, the proposal included a new exemption, titled the Best Interest Contract Exemption, which the Department states was designed to allow retirement savers to continue to utilize commission-based brokerage accounts.⁴ These accounts are more cost effective for small savers and as such are likely to be utilized by myRA account holders transferring balances of \$15,000 or less. However, at this time it is unclear how feasible it will be for broker-dealers to continue to offer these accounts to retirement savers and still comply with the new requirements the Department proposed.⁵

We submitted two letters to the Department detailing our concerns with their proposed rule.⁶ We suggested an alternative path that furthers investor protection while still maintaining access to affordable financial advice for retirement savers of modest means. A loss of access to independent broker-dealers and their affiliated financial advisors would detrimentally affect the progress made by myRA in encouraging Americans of modest means to save for retirement. Research from a variety of sources has shown that investors that work with financial advisors save more, and are better prepared, for retirement.⁷ We encourage Treasury to engage in a

³ 80 Fed. Reg. 21928 (Apr. 20, 2015).

⁴ 80 Fed. Reg. 21960 (Apr. 20, 2015).

⁵ See e.g. ROBERT LITAN AND HAL SINGER, GOOD INTENTIONS GONE WRONG: THE YET-TO-BE-RECOGNIZED COSTS OF THE DEPARTMENT OF LABOR'S PROPOSED FIDUCIARY RULE (July 2015), available at <https://www.dol.gov/ebsa/pdf/1210-AB32-2-00517.pdf> (arguing that the proposed fiduciary rule is likely to cause brokerage firms to exit the retirement market); OXFORD ECONOMICS, ECONOMIC CONSEQUENCES OF THE US DEPARTMENT OF LABOR PROPOSED NEW FIDUCIARY STANDARD (Aug. 2015), available at http://www.financialservices.org/uploadedFiles/FSI_Content/Advocacy_Action_Center/DOL/FSI-OE-Economic-Impact-Study.PDF (describing how the proposed rule will result in less access to advice from financial advisors to small and medium-sized investors); NERA ECONOMIC CONSULTING, COMMENT ON THE DEPARTMENT OF LABOR PROPOSAL AND REGULATORY IMPACT ANALYSIS (July 17, 2015), available at <http://www.sifma.org/issues/item.aspx?id=8589955443> (asserting that the proposed rule may effectively make the commission-based brokerage model unworkable for ERISA accounts).

⁶ See Letter from David T. Bellaire, Esq., Executive Vice President & General Counsel, FSI (July 21, 2015), available at http://www.financialservices.org/uploadedFiles/FSI_Content/Advocacy_Action_Center/DOL/FinancialServicesInstitute-DOL-Proposal-Comment-Letter2015-07-21.pdf; Letter from David T. Bellaire Esq., Executive Vice President & General Counsel, FSI (Sept. 24, 2015), available at http://www.financialservices.org/uploadedFiles/FSI_Content/Advocacy_Action_Center/DOL/FSI-Supplemental-Comment-Letter-20150924.pdf.

⁷ See e.g., QUANTRIA STRATEGIES, ACCESS TO CALL CENTERS AND BROKER DEALERS AND THEIR EFFECTS ON RETIREMENT SAVINGS (Apr. 2014), available at http://quantria.com/DistributionStudy_Quantria_4-1-14_final_pm.pdf; OLIVER WYMAN, THE ROLE OF FINANCIAL ADVISORS IN THE US RETIREMENT MARKET 6, 16 (Jul.

dialogue with the Department to ensure myRA account holders maintain the ability to receive affordable, personal investment advice, and adequately plan for a dignified retirement.

B. Treatment of Free Credit Balances

SEC Rule 15c3-3(j)(2)(ii)(A) requires a broker-dealer to obtain prior written affirmative customer consent prior to transferring the customer's free credit balances into a product in its "Sweep Program."⁸ The consent must be provided after the customer has been notified of the general terms and conditions of the products available through the Sweep Program. This requirement would ostensibly prohibit a broker-dealer that has opened a Roth IRA on behalf of a myRA account holder via an automatic transfer from placing the cash in an interest-bearing instrument while it awaits investment instructions from the account holder. The money in the newly opened account must remain idle and uninvested until the customer has consented to the terms of the Sweep Program. Therefore, the ability to even earn modest income on these funds while the account holder considers investment options is in doubt.

While this surely harms the customer, it also raises an express conflict with Treasury Regulations for nonbank IRA custodians. Treasury Regulation 1.408-2(e)(5)(iv) requires funds held in a fiduciary capacity by a nonbank custodian to "not be held uninvested or undistributed any longer than is reasonable for the proper management of the account." It is unclear if allowing transferred myRA account balances to remain uninvested due to an inability to obtain written customer consent is reasonable under Treasury Regulations. As such we request that Treasury clarify that a broker-dealer that allows transferred myRA account balances to remain uninvested and does not sweep such funds into its Sweep Program in accordance with SEC Rule 15c3-3(j)(2)(ii) will not be in violation of Treasury Regulations for nonbank custodians.

III. **Automatic Transfer Process**

Treasury requested comments on the process by which it would automatically transfer a myRA account balance to a private sector Roth IRA provider. Treasury inquired as to whether multiple providers should be eligible to receive automatic transfers or only a single provider. Should multiple providers be eligible, Treasury requested comments on a potential rotation that would be used to allocate accounts amongst eligible providers.

While we appreciate Treasury's desire to obtain specific feedback on the automatic transfer process, we believe the regulatory conflicts identified above pose threshold issues that require addressing prior to considering a potential transfer process. We recommend that Treasury engage all relevant stakeholders, from both the public and private sectors, and work to develop solutions to each of the issues discussed above. We look forward to providing specific feedback once Treasury has provided additional guidance to broker-dealers explaining how they can meet their existing regulatory obligations while participating in automatic transfers of myRA balances.

Automatically transferring myRA account balances to private sector Roth IRA providers poses a variety of important issues for consideration. We are interested in providing feedback on:

2015), available at <http://fsroundtable.org/wp-content/uploads/2015/07/The-role-of-financial-advisors-in-the-US-retirement-market-Oliver-Wyman.pdf>.

⁸ A Sweep Program is an offering maintained by a broker-dealer whereby a customer's free credit balances in a securities account are "swept" to a money market mutual fund or an account at a bank whose deposits are FDIC-insured.

- How firms and financial advisors can express interest in participating in the automatic transfer process,
- Eligibility criteria for interested providers,
- Requirements imposed on approved providers,
- The ability of a provider to decide to no longer remain an eligible provider following approval,
- The ability of an approved provider to decline receipt of an automatically transferred account, and
- The method by which providers will be selected for a particular account holders.

We look forward to the opportunity to address these and other relevant issues in a subsequent request for comment after Treasury has provided guidance on how broker-dealers can meet their existing regulatory requirements while participating in an automatic transfer.

IV. Communicating with myRA Account Holders

Treasury also requests comment on the types of communications and materials that should be provided to account holders regarding retirement savings options and the transferring of myRA account balances. Treasury requested comment on the content of these communications, the timing of these communications and the delivery mechanism for these communications.

We believe that it is important for every American to have access to quality, affordable, independent financial advice. Financial advisors educate their clients about the importance of participating in retirement savings programs. They help their clients navigate major financial decisions about retirement, college education funding and purchasing a home. They are there when clients face significant life events such as medical concerns, deaths in the family, and caring for aging parents.

Therefore, we recommend that Treasury notify myRA account holders about the impending end to the accrual of interest on their savings bond 90 days prior to reaching the Transfer Threshold. This communication should include information reiterating the importance of saving for retirement and opening a Roth IRA with an eligible financial institution. In this notice, Treasury should encourage myRA account holders to approach financial advisors operating in the same geographic areas as the account holder. For individuals that have never previously engaged in the retirement saving and investing process, having access to the guidance of a financial advisor is critical to ensuring they have the support they need to navigate what can be a daunting process. We believe that financial advisors can be a critical resource to ensuring the success of myRA in closing the retirement savings gap.

To facilitate these interactions Treasury should include a list of all eligible financial advisors with an office near the myRA account holder. The list should include for each financial advisor their name, address, telephone number, and website, should the financial advisor maintain a website. The financial advisors should be listed based on proximity to the account holder. The communication should also include a statement explaining that myRA account holders may research these financial advisors on FINRA's BrokerCheck database. This communication, including the list of eligible financial advisors, should also be presented to myRA account holders 60 days and 30 days prior to reaching the Transfer Threshold. Additionally, we encourage Treasury to

consider communicating periodically with account holders, irrespective of their proximity to the Transfer Threshold, regarding the importance of engaging a financial advisor to help plan for retirement.

Conclusion

We are committed to constructive engagement in the regulatory process and welcome the opportunity to work with Treasury on this and other important regulatory efforts

Thank you for considering FSI's comments. Should you have any questions, please contact me at (202) 803-6061.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. T. Bellaire". The signature is fluid and cursive, with a large initial "D" and "T" followed by "Bellaire".

David T. Bellaire, Esq.
Executive Vice President & General Counsel