

Comment Letter on Thrift Savings Plan Rollover Procedures, December 2001

December 20, 2001

Mr. Roger W. Mehle
Executive Director
Federal Retirement Thrift Investment Board
1250 H Street, N.W.
Washington, DC 20005

Re: Form TSP-60: Request for a Transfer into the TSP

Dear Mr. Mehle:

On behalf of its investment company members, the Investment Company Institute¹ wishes to express the industry's concern with the Thrift Savings Plan's Form TSP-60: Request for a Transfer into the TSP. This form permits TSP participants to transfer or rollover funds from a qualified retirement plan or a conduit IRA pursuant to Public Law 106-361, which became effective on July 1, 2001.

Since July 1, 2001, certain of our members have been asked by their IRA shareholders to complete Section II of the Form TSP-60, which requires a certification by the trustee or custodian of the conduit IRA from which the eligible rollover distribution is being (or was) distributed. The form requests that the trustee or custodian check "Yes" or "No" to the following question: "Does this eligible rollover distribution consist solely of money received in an earlier distribution from a qualified retirement plan, and earnings on that money?" In addition, the representative of the trustee or custodian is requested "to clarify that the foregoing is true and correct to the best of my knowledge."

As of year-end 2000, approximately 46 percent of the \$2.7 trillion IRA market was invested in mutual funds.² The Institute's members serve as trustees for an estimated 100 million IRA accounts, and retirement assets move from these accounts daily into other IRAs and into qualified retirement plans. We are unaware of any other account or plan that requires such a certification from the financial institution holding the IRA account rather than from the account owner, who is the only party with the ability to certify any information about the source of the assets in the account.

Furthermore, we note that, effective January 1, 2002, IRAs will not need to qualify as conduit IRAs in order to transfer amounts into the TSP, because of certain amendments to the Internal Revenue Code of 1986 pursuant to the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). This letter therefore addresses transfers both before and after the effective date of the Internal Revenue Code changes.

Pre-2002 Transfers

Under section 8432(j) of Title 5 of the United States Code, "an employee or Member may contribute to the Thrift Savings Fund an eligible rollover that a qualified trust could accept under the Internal Revenue Code of 1986." Section 408(d)(3)(A)(ii) of the Internal Revenue Code provides that IRA amounts may be rolled over tax-free into a qualified retirement plan only if "no amount in the account ... is attributable to any source other than a rollover contribution (as defined in section 402) from an employer's trust described in section 401(a) which is exempt from tax under section 501(a) or from an annuity plan described in section 403(a) (and any earnings on such contributions)." An IRA described in section 408(d)(3)(A)(ii) of the Code is commonly referred to as a "conduit IRA."

As noted in the instructions to Form TSP-60, a conduit IRA must contain only funds transferred or rolled over from a qualified retirement plan and earnings on those amounts, and cannot contain any funds contributed directly from the IRA owner. If the owner has mixed regular contributions or funds from other sources with a rollover distribution, the IRA will not qualify as a conduit IRA.

Thus, in order to determine whether an IRA is a conduit IRA, a financial institution would have to know that the account contains only amounts transferred or rolled over from a qualified plan and earnings thereon. In most cases, the financial institution must rely on the IRA owner as to the source of the amounts contained therein. This is especially true if the current conduit IRA account was not the original recipient of a rollover from a qualified plan, but instead has received assets directly from the IRA owner or from another conduit IRA.

Furthermore, IRA trustees generally do not have the resources or systems to trace back through an account's history in order to determine whether any other contributions have been made subsequent to the original rollover. Although we understand that some firms have been able to supply this information to date with respect to certain isolated requests, such individualized searches would not be feasible on a larger scale, given the large number of IRA accounts maintained by our member firms. Our members, therefore, generally have not authorized their representatives to sign such a certification. We believe that the only party who can sign such a certification is the employee.

Post-2001 Transfers

As noted above, EGTRRA revisions to the Internal Revenue Code have eliminated the "conduit IRA" requirement. Under the Internal Revenue Code as effective January 1, 2002, amounts from any IRA (other than nondeductible contributions to the IRA and after-tax contributions rolled over into the IRA) may be rolled over into a qualified plan. Thus, under the terms of 5 U.S.C. section 8432(j), the TSP will also be able to accept such a contribution from any IRA. The conduit IRA provisions currently included in the Form TSP-60 therefore will be obsolete after December 31, 2001, and should be eliminated. Although the revised Form TSP-60 might seek information concerning whether the IRA contains either nondeductible IRA contributions or after-tax contributions rolled over from a plan, the answers to these questions are exclusively within the employee's knowledge.

Under current law, an individual who makes a nondeductible contribution to an IRA for a particular taxable year is required to report the contribution directly to the IRS on Form 8606, which is filed as part of his or her tax return for that year.³ IRA trustees have no responsibility to keep records of, track, or report to the IRS any information as to whether a particular IRA contribution is deductible or nondeductible. Congress specifically envisioned similar tracking by IRA owners of after-tax contributions rolled into IRAs after the effective date of EGTRRA through the expansion of Form 8606.⁴ Accordingly, we recommend that any certification requirement in the revised version of Form TSP-60 require only employee certification as to whether the amount being rolled over is eligible for rollover.

* * *

We appreciate this opportunity to express the industry's concern with the certification requirement contained in Form TSP-60, and to provide recommendations concerning future revisions to the Form. Institute representatives would be happy to meet with you to further discuss this issue. Please contact me at (202) 371-5432 if we can provide any further information.

Sincerely,

Kathy D. Ireland
Associate Counsel

cc: Elizabeth S. Woodruff, General Counsel

ENDNOTES

¹ The Investment Company Institute is the national association of the American investment company industry. Its membership includes 9,063 open-end investment companies ("mutual funds"), 485 closed-end investment companies, and 6 sponsors of unit investment trusts. Its mutual fund members have assets of about \$6.598 trillion, accounting for approximately 95% of total industry assets, and over 88.6 million individual shareholders.

² "Mutual Funds and the Retirement Market," *ICI Fundamentals*, Vol. 10, No. 2, June 2001.

³ Internal Revenue Code § 408(o)(4); see IRS Publication 590, Individual Retirement Arrangements (IRAs) at 16-18. Form 8606 must also be filed with the individual's tax return for a taxable year if the individual received a distribution from a traditional, SEP, or SIMPLE IRA during the year and the individual has ever made a nondeductible contribution to a traditional IRA. All of an individual's traditional, SEP, and SIMPLE IRAs must be aggregated in order to determine the nontaxable basis in a distribution from any of these accounts. See Form 8606, Items 6 through 10.

⁴ "It is anticipated that the IRS will develop forms to assist individuals who roll over after-tax contributions to an IRA in keeping track of such obligations. Such forms could, for example, expand Form 8606 – Nondeductible IRAs, to include information regarding after-tax contributions." Conference report to H.R. 1836, at 155.

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