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Watson Wyatt & Company

Alhambra International Center
Suite 950
255 Alhambra Circle
Coral Gables, FL 33134-7400
Telephone 786 552 1100
FL Wats 800 432-8802
Fax 786 552 1100

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Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5669
U.S. Department of Labor
Washington, DC 20210

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Subject: Automatic Rollover Regulations

Dear Sir or Madam:

These comments are submitted by Watson Wyatt Worldwide, a global human capital and financial management consulting firm specializing in employee benefits, human capital strategies, and technology solutions. We are seeking clarification and providing comments on the application of the Department of Labor (DOL) proposed automatic rollover regulations to plans established and maintained in Puerto Rico.

The proposed automatic rollover regulations are issued under the general fiduciary requirements of ERISA, which apply to employer-sponsored benefit plans in Puerto Rico. We note that while the fiduciary standards of ERISA apply to every employer-sponsored pension plan in Puerto Rico, the requirement to automatically roll over certain distributions applies only to certain plans. Many Puerto Rican employers qualify their pension and profit-sharing plans under both the Puerto Rico Revenue Code and the U.S. Internal Revenue Code. These so-called "dual qualified" plans would be subject to the requirements of Code §401(a)(31) that, absent an affirmative election by the participant, certain mandatory distributions be directly transferred to an individual retirement plan.

However, many plans sponsored in Puerto Rico are qualified only under the Puerto Rico Revenue Code, which does not have a requirement for default rollovers. Only dual qualified plans will need to provide for automatic rollovers for certain involuntary distributions, but any Puerto Rico plan that provides for an automatic rollover will be governed by the ERISA regulations as finalized by the DOL. We seek clarification on the application of the proposed regulations to automatic rollovers by dual qualified Puerto Rico plans, specifically the definition of a regulated financial institution.



The proposed automatic rollover regulations restrict the rollover of distributions to a federally regulated financial institution, a term defined by prop. reg. 2550.404a-2(c)(3)(ii); to a bank or savings association, the deposits of which are insured by the Federal Deposit Insurance Corporation; a credit union, the member accounts of which are insured within the meaning of section 101(7) of the Federal Credit Union Act; an insurance company, the products of which are protect by state guarantee associations, or an investment company registered under the Investment Company Act of 1940. All of the federal laws referenced in the proposed regulation apply to financial institutions doing business in Puerto Rico. For example, a bank or savings association, including one organized and headquartered in Puerto Rico, is subject to the deposit insurance rules of the Federal Deposit Insurance Corporation. Additionally, Puerto Rico has a guarantee association protecting insurance company products. Accordingly, it is our understanding that an investment product offered by a Puerto Rican bank or savings association, credit union, insurance company, or investment company satisfies requirements of the proposed rollover regulations, but we would appreciate confirmation of that analysis.

Our comment concerns the fiduciary standards of automatically rolling over a distribution from a dual qualified Puerto Rico plan to an investment product maintained by a Puerto Rico financial institution. It is unclear whether many individual retirement plan products offered by Puerto Rico financial institutions satisfy the requirements of the Puerto Rico Revenue Code. It is our understanding that very few, if any, Puerto Rico financial institutions offering individual retirement plan products obtain rulings from the IRS concerning whether the product satisfies the U.S. IRA requirements, including the requirements that an IRA be provided by a bank or non-bank trustee, as those terms are defined by section 408 of the U.S. Internal Revenue Code. Accordingly, the transfer of a distribution from a dual qualified plan to a Puerto Rico IRA may not be viewed as a rollover under the U.S. Internal Revenue Code and could possibly result in some portion of the participant's benefit being considered U.S. taxable income. It is not clear whether a plan fiduciary engaging in an automatic rollover transaction with potential adverse tax consequences to the participant satisfies the fiduciary standards of ERISA.

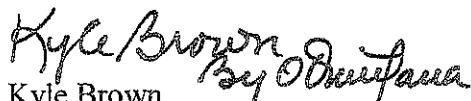
While we understand the DOL cannot comment on the potential tax consequences of a transaction under either the U.S. or Puerto Rico tax laws, the DOL can indicate whether triggering potential tax consequences to the participant is a factor in satisfying the fiduciary standards of ERISA during an automatic rollover. If the potential for adverse tax consequences to a participant raise liability concerns under ERISA's fiduciary standards, plan administrator's for dual qualified plans will have extreme difficulty in satisfying those standards for automatic rollovers. Very few Puerto Rico financial institutions offer products that satisfy the U.S. Internal Revenue Code requirements for individual retirement arrangements.

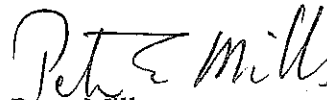


If the potential for adverse tax consequences is a factor to be considered under the ERISA fiduciary standards for an automatic rollover transaction, many Puerto Rico employers will consider ceasing the dual qualification of their plan and maintain the plan only under the qualification standards in the Puerto Rico Revenue Code. We believe ERISA's fiduciary standards are primarily concerned with minimizing risk, asset preservation within the investment product and maintenance of liquidity, as indicated by the preamble to the proposed regulations, not the potential tax consequences to the participant of the transaction. Accordingly, it should not be considered a breach of ERISA's fiduciary standards for a dual qualified plan to provide for an automatic rollover of certain involuntary distributions to an investment product offered by a regulated financial institution merely because the investment product may not be a tax-favored individual retirement arrangement satisfying the requirements of the U.S. Internal Revenue Code.

We appreciate your consideration of this issue. If you have any questions or would like to discuss further, please do not hesitate to contact us.

Sincerely yours,


Kyle Brown
Retirement Counsel
Research and Information Center
Watson Wyatt Worldwide


Peter Mills
Retirement Practice Director
Latin American Division
Watson Wyatt Worldwide