

Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.* The claims involved are asserted by the United States on behalf of the Environmental Protection Agency, the Department of Agriculture, and the Department of Interior, and claims are asserted by the states of Colorado, Oklahoma, Missouri, Kansas, Illinois, Montana, Tennessee, and by the Eastern Shawnee Tribe of Oklahoma, the Ottawa Tribe of Oklahoma, the Peoria Tribe of Indians of Oklahoma, the Seneca-Cayuga Nation, the Wyandotte Nation, the Miami Tribe of Oklahoma and the Cherokee Nation ("the Governments"). The Consent Decree also resolves claims against Blue Tee, David P. Alldian, Richard A. Secrist, and William M. Kelly ("D&O Defendants") under the Federal Debt Collection Procedures Act ("FDCPA"), 28 U.S.C. 3301 *et seq.* and similar state and tribal laws. Under the Consent Decree, the Governments will share in payments from the Settling Defendants totaling \$75,725,000 which will be allocated on a site by site basis as set forth in the Consent Decree. In this Consent Decree the United States grants covenants not to sue for the following Sites: Old American Zinc Plant, Sauguet Industrial Corridor, and Asarco Taylor Springs Sites in Illinois; the Tar Creek Site in Oklahoma; the Cherokee County, Caney Residential Yards, American Zinc, Lead and Smelting Company, Dearing, Neodesha, Owen Zinc, and East La Harpe Smelter Sites in Kansas; the Jasper County and Newton County Sites in Missouri; the Carpenter-Snow Creek Mining Site in Montana; the Klondyke Tailings Site in Arizona; the Bonita Peak and Ouray Sites in Colorado; the Rockwood Iron and Metal Site in Tennessee; and the Anderson-Calhoun Mine & Mill and the Grandview Mine & Mill Sites in Washington. The CERCLA claims arise from the Blue Tee's and BSI's liabilities under Section 107(a) of CERCLA, 42 U.S.C. 9607(a), for costs incurred and to be incurred relating to the sites listed above.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America, et al. v. Blue Tee Corp., Brown Strauss, Inc., David P. Alldian, Richard A. Secrist, and William M. Kelly* Case No. 3:18-cv-5097, D.J. Ref. No. 90-11-2-330/12. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

<i>To submit comments:</i>	<i>Send them to:</i>
By email .....	<a href="mailto:pubcomment-ees.enrd@usdoj.gov">pubcomment-ees.enrd@usdoj.gov</a> .
By mail .....	Assistant Attorney General, U.S. DOJ-ENRD, P.O. Box 7611, Washington, DC 20044-7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>. We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ-ENRD, P.O. Box 7611, Washington, DC 20044-7611.

Please enclose a check or money order for \$10.75 (25 cents per page reproduction cost) payable to the United States Treasury.

**Susan M. Akers,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

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## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

[Exemption Application No. D-11938]

#### Notice of Proposed Exemption Involving Retirement Clearinghouse, LLC (RCH or the Applicant)—Located in Charlotte, North Carolina

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Notice of proposed exemption.

**SUMMARY:** This document gives notice of a proposed individual exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

**DATES:** Written comments and requests for a public hearing on the proposed exemption should be submitted to the Department December 24, 2018.

If the Department of Labor (Department) grants this proposed exemption, it will be effective for five years beginning on the date a final exemption is published in the **Federal Register**.

**ADDRESSES:** Comments should state the nature of the person's interest in the

proposed exemption. If the commenter would be adversely affected by the exemption's approval, the comment should describe the manner in which the commenter will be adversely affected. A request for a hearing can be requested by any interested person who may be adversely affected by an exemption. A request for a hearing must state: (1) The name, address, telephone number, and email address of the person making the request; (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption; and (3) a statement of the issues to be addressed and a general description of the evidence to be presented at the hearing. The Department will grant a request for a hearing made in accordance with the requirements above where a hearing is necessary to fully explore material factual issues identified by the person requesting the hearing. A notice of such hearing shall be published by the Department in the **Federal Register**. The Department may decline to hold a hearing if: (1) The request for the hearing does not meet the requirements above; (2) the only issues identified for exploration at the hearing are matters of law; or (3) the factual issues identified can be fully explored through the submission of evidence in written (including electronic) form.

All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, U.S. Department of Labor, 200 Constitution Avenue NW, Suite 400, Washington, DC 20210. Attention: Application No. D-11938. Interested persons are also invited to submit comments and/or hearing requests to EBSA via email or FAX. Any such comments or requests should be sent either by email to: [e-oed@dol.gov](mailto:e-oed@dol.gov), or by FAX to (202) 693-8474 by the end of the scheduled comment period. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N-1515, 200 Constitution Avenue NW, Washington, DC 20210.

**Warning:** All comments received will be included in the public record without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be confidential or other information whose disclosure is restricted by statute. If you submit a

comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as your Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. However, if EBSA cannot read your comment due to technical difficulties and cannot contact you for clarification, EBSA might not be able to consider your comment. Additionally, the <http://www.regulations.gov> website is an "anonymous access" system, which means EBSA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to EBSA without going through <http://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public record and made available on the internet.

**FOR FURTHER INFORMATION CONTACT:** Mr. Joseph Brennan of the Department at (202) 693-8546. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** This document contains a notice of proposed exemption that, if granted, would provide exemptive relief from the sanctions resulting from the application of Code section 4975, by reason of sections 4975(c)(1)(D) and (E) of the Code. The proposed exemption has been requested by RCH pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).<sup>1</sup> Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of proposed exemption is issued solely by the Department.

### Summary of Facts and Representations<sup>2</sup>

1. RCH is a limited liability corporation headquartered in Charlotte, North Carolina. RCH has two wholly-owned subsidiaries: RCH Securities, LLC, a broker-dealer member of FINRA;

and RCH Shareholder Services, a registered transfer agent.

2. RCH has developed an Auto-Portability Program (the RCH Program) that is designed to help employees who may have multiple job changes over their careers consolidate small accounts held in prior employers' individual account plans and rollover IRAs into their new employers' individual accounts or 401(k) plans. The objective of the RCH Program is to improve overall asset allocation, eliminate duplicative fees for small retirement saving accounts, and reduce leakage of retirement savings from the tax-deferred retirement saving system.<sup>3</sup>

3. The RCH Program services are designed to facilitate: (a) Automatic rollovers into default IRAs pursuant to 29 CFR 2550.404a-2 from accounts in plans of individuals' former employers that are eligible for mandatory distribution under Code section 401(a)(31)(B) (Eligible Mandatory Distribution Accounts); (b) automatic rollovers into default IRAs pursuant to 29 CFR 2550.404a-3 of account balances from terminated defined contribution plans (Terminated Plan Accounts); and (c) automatic roll-in of funds in these default IRAs (Default IRAs) to an individual account plan maintained by the IRA owners' new employer when the IRA owner changes jobs.

4. RCH uses a "locate, match, and transfer" technology that performs periodic queries of cooperating record-keepers' systems to ascertain if the IRA owner has become a participant in an individual account plan through re-employment. If the individual subsequently participates in a different individual account plan, RCH's service is designed to transfer the individual's Default IRA assets to that new plan. Some plans may elect to use Code section 401(a)(31)(B) for mandatory distributions to a Default IRA only after the RCH Program's locate and match services identify that the participant maintains an active plan account in the individual account plan of the separated participant's new employer.

5. Under the RCH Program, participating plan sponsors designate RCH or a participating record-keeper to be the plan's Default IRA provider for automatic rollovers of mandatory distributions under Code section 401(a)(31)(B) and for distributions from terminated defined contribution plans. The plans also agree to adopt plan amendments and resolutions necessary to carry out transfers under the RCH

Program and to make disclosures to plan participants and beneficiaries about the RCH Program. The plans also agree that RCH and the participating record-keeper may use plan data to facilitate the RCH Program. An unaffiliated bank will be the custodian of the RCH Default IRA assets, and financial institutions unrelated to RCH or its affiliates will provide all investment products and investment management services for the RCH Default IRAs.

6. RCH will generally enter into a Master Services Agreement (a Master Agreement) with record-keepers that will offer the RCH Program to their plan sponsor clients. The Master Agreement will describe how record-keepers and RCH will locate the accounts of individuals with Safe Harbor IRAs and Eligible Mandatory Distribution Accounts who have Plan accounts with their current employers (New Plan Accounts). The Plan sponsor or other plan fiduciary that is independent of RCH (an independent plan fiduciary) may approve of the RCH Program by executing agreements with their record-keepers (Record-keeping Agreements). Alternatively, independent plan fiduciaries may approve of the use of the RCH Program through a direct agreement with RCH (an RCH Agreement). The Record-keeping Agreement or RCH Agreement will provide that the account balance of an individual's Default IRA or Eligible Mandatory Distribution Account may be transferred to the plan of the individual's current employer if the RCH locate and match process determines that the individual maintains a New Plan Account with that employer.

7. The RCH Program portability process begins with the employer or plan sending RCH data for separating participants in ongoing plans or participants in terminating plans, as applicable. RCH uses the following information to determine whether it can confirm a match: Social security number; first name; last name; middle name or initial; address; city; state; zip code; date of birth; and phone number on file. RCH does not share, sell or market any data obtained under the RCH Program, nor does it use the data for any purpose other than implementation of the RCH Program. All fees received by RCH in connection with the RCH Program are disclosed to, and approved by, the independent plan fiduciary in the applicable Record-keeping Agreement and/or RCH Agreement.

<sup>1</sup> For purposes of this proposed exemption, references to the provisions of Title I of ERISA, unless otherwise specified, refer also to the corresponding provisions of the Code.

<sup>2</sup> The Summary of Facts and Representations is based on the Applicant's representations and does not reflect factual findings or opinions of the Department, unless indicated otherwise.

<sup>3</sup> This exemption does not cover transactions involving accounts with balances above \$5,000 at the time of transfer to the new account.

*RCH as Default IRA Provider*

8. In the case of ongoing plans, RCH receives information identifying separated participant accounts that are subject to mandatory distribution under the Code. RCH sends a letter (a Mandatory Distribution Letter) informing the separated participants that their accounts will be automatically rolled over into a Default IRA unless they give affirmative directions on the disposition of their accounts within 30–90 days, depending on the time period selected by the independent plan fiduciary.<sup>4</sup> In the case of a terminating plan, RCH sends a similar letter to all participants. RCH sends the notices required under the RCH Program to the last known address of the individual, as received from the individual's current employer. Individuals that are "lost" or "missing" do not participate in the RCH Program.<sup>5</sup> RCH barcodes and scans each letter that is sent or received, and records internally when each letter is mailed.<sup>6</sup> The Mandatory Distribution Letters also explain the plan's distribution options, disclose all fees and features of the RCH Program, and include a Code-required notice explaining various tax rules for eligible rollover distributions. All RCH Program communications are written to be easily understood by the recipient. The Mandatory Distribution Letters describe the RCH Program's automated transfer of the Default IRA to a new employer's individual account plan based on RCH's periodic automated searches for current employment status of Default IRA owners. The Mandatory Distribution Letters also advise that individuals may opt out of the automated transfer

service, and the letters include a toll-free number and information on contacting RCH. RCH represents that individuals receiving Mandatory Distribution notices are effectively given the opportunity to opt out by the use of a phone number that is operational and with a clearly available opt out choice in the main menu.

9. RCH call center personnel are not licensed broker-dealers or registered investment advisers, and do not give legal, investment, or tax advice. Call center personnel are only authorized to: (a) Provide educational information on consolidating assets in a single 401(k) plan; (b) assist with the paperwork needed to create a new IRA, roll plan assets over to an IRA, or authorize a transfer to a new employer's 401(k); (c) provide educational information to participants on the benefits of accumulating assets for retirement; (d) discuss the consequences of cashing out of a 401(k) or IRA; (e) verify the participant or Default IRA holder's identity; and (f) provide educational information on QDROs and beneficiaries.

10. If the individual fails to respond to the Mandatory Distribution Letter within the stated timeframe, the independent plan fiduciary will direct the transfer of assets from the plan to the Default IRA. The custodian of the IRA assets will be an unaffiliated bank, and all investment products and investment management services for the IRAs will be provided by financial institutions that are unrelated to RCH and its affiliates. RCH will send a second notice to the individual (the Welcome Letter) no later than one business day after the assets are received by the Default IRA. The Welcome Letter will include the following information and disclosures: (a) The dollar amount of the IRA's assets; (b) identification of the investment fund in which the IRA's assets are invested; (c) a trade confirmation; (d) contact information including toll-free numbers for the call center and on-line access instructions; (e) a full and complete statement of all fees that are charged to the Default IRA, including all compensation, direct or indirect, received by RCH, related parties and participating record-keepers; (f) notice that the individual may instruct RCH or the participating record-keeper to transfer his or her balance from the Default IRA to another account at any time before the transfer of the IRA funds to the individual's account at his or her current employer plan, and that RCH will not transfer the Default IRA for at least 60 days from the date of the Welcome Letter.

11. While the assets are in the Default IRA, participating record-keepers will use the RCH electronic records matching technology to search periodically (and no less than monthly) their plan/participant records, to identify potential matches of plan and IRA accounts. When there is a match, RCH validates the account information and sends a "Consent Letter" requesting that the IRA owner/participant consent to transfer the IRA funds to the new employer's individual account plan. Since a transfer only occurs when the individual is identified as a participant in a new employer's plan, the Consent Letter is sent to the address provided to RCH by the record-keeper for the participant's new employer's plan (based on the assumption that the new employer's plan has the most up-to-date address for the individual). The participant can approve this "roll-in transaction" through affirmative consent. If the participant does not respond within 30 days of receipt of the Consent Letter, by affirmatively assenting or declining the roll-in, the RCH Program activates its default roll-in transaction provisions. Before a default roll-in occurs, the new employer's plan must agree to accept the roll-in under the terms in the new employer's plan. Once the new employer plan consents to the roll-in, RCH: Closes the IRA after withdrawing applicable fees from the IRA; and directs the roll in of the remaining balance into the participant's new-employer plan (which the responsible fiduciaries would automatically invest in the new employer's plan according to the participant's current investment elections, or if the participant has not made an election, into the plan's qualified default investment alternative). RCH then sends a notice to the IRA owner of the transfer of IRA funds to the new employer's plan, which will describe all the fees incurred by the IRA.

*Conduit Model Transfers*

12. A plan sponsor may designate a participating record-keeper (other than RCH) to be the plan's Default IRA provider. If the record-keeper participates in the RCH Program, the Mandatory Distribution Letter, Welcome Letter, and the Consent Letter will all be sent to the individual by the participating record-keeper or RCH. In the case of a match, assets from a default IRA maintained by the participating record-keeper will be transferred to the new employer plan through a RCH default IRA acting as a conduit.

Alternatively a plan sponsor may maintain an Eligible Mandatory

<sup>4</sup> The Mandatory Distribution Letter is sent no later than the following business day after RCH receives the file from the plan sponsor indicating that a plan participant is eligible for mandatory distribution under section 401(a)(31)(B) of the Code.

<sup>5</sup> If RCH sends a Mandatory Distribution Letter to an individual's last known address and it is returned to RCH as undeliverable, RCH removes the individual from the portability features of the Program. RCH thereafter performs ongoing participant address validation searches via automated checks of National Change of Address records, two separate commercial locator databases, and RCH internal databases. These searches occur twice in the first year a participant's account is entered into the RCH system and once a year thereafter. RCH will also perform manual internet-based search activities in cases where a valid participant address is not obtained from the automated database checks. RCH will only reintroduce the individual to the Program upon receipt of a valid address.

<sup>6</sup> As the Department's Comment section below notes, RCH must take all prudent actions necessary to reasonably ensure that participant and beneficiary data are current and accurate, and that the appropriate participants and beneficiaries actually receive all of the required notices and disclosures, until the assets are transferred to a new plan account under the RCH Program.

Distribution Account in its plan. If RCH or a participating record-keeper determines that an individual has a New Plan Account at the individual's current employer, RCH or the participating record-keeper will send the individual a Mandatory Distribution Letter and a Consent Letter seeking affirmative consent from the individual to transfer the assets to the new plan. The Mandatory Distribution Letter will note that if the individual fails to contact RCH within 60 days of the Consent Letter, the individual's account balance will be transferred to the plan of the individual's current employer through an RCH Default IRA unless the individual opts out of the transfer. The Consent Letter will fully state the fees and other compensation, direct or indirect, of any type, associated with the RCH Program, and will explain that if the individual fails to opt out of the RCH Program within 60 days of receiving the Consent Letter, the assets will be transferred to the New Plan Account. If, after 30 days, the participant has not contacted RCH with instructions to opt in or opt out of the RCH Program, RCH will call the participant seeking consent to transfer the assets to the individual's new employer plan. RCH will send another Consent Letter that will reiterate the fees and compensation associated with the RCH Program. The second Consent Letter will explain that, unless the individual opts out of the RCH Program within 30 days of receiving the letter, RCH will direct the transfer of the assets to the New Plan Account (which the responsible fiduciaries would automatically invest in the new employer's plan according to the participant's current investment elections, or if the participant has not made an election, into the plan's qualified default investment alternative).

13. If the individual does not provide affirmative direction to RCH within 30 days of the applicable Consent Letter, the assets of the Eligible Mandatory Distribution Account, or, if applicable, the assets of the non-RCH Default IRA, will be transferred to an RCH Default IRA, and then to the individual's New Plan Account.

#### Fees

14. RCH, related parties and record-keepers will fully disclose to an independent plan fiduciary all fees and other compensation, direct or indirect, that they may receive in connection with the RCH Program. The independent plan fiduciary must approve any such fees or compensation prior to receipt. If RCH is selected as the

Default IRA provider by the plan sponsor, the sole fees paid in connection with the IRA are: (a) A monthly administrative fee covering the provision of administrative services to the IRA; (b) a distribution fee in the event that the IRA is terminated and the IRA owner decides to cash out or transfer the IRA account balance to another qualified retirement plan; (c) a sub-transfer agency fee that the IRA investment provider pays to RCH, after the provider is selected by the plan's independent fiduciary; (d) a one-time communication fee, that reimburses RCH solely for the cost of issuing notices and forms associated with effectuating the transfer to a Default IRA; and (e) a distribution/roll-in fee (a Transfer Fee) paid if the IRA is terminated and the IRA account balance is rolled in to a new employer plan with the assistance of RCH. RCH receives only the Transfer Fee and communication fee if RCH is not selected as the Default IRA provider. The custodian of the IRA assets will be an unaffiliated bank, and all investment products and investment management services for the IRAs will be provided by financial institutions that are unrelated to RCH and its affiliates.

15. RCH will not have authority to increase the amounts or types of fees or compensation received for these services once a Default IRA is established. Under the RCH Program's current pricing structure, the Transfer Fee will not exceed \$59 for Account balances of \$590 or more. If a participant's balance falls below \$590 at the time of consolidation, the Transfer Fee will be reduced to not more than 10 percent of the balance. Account balances of \$50 or less do not pay a Transfer Fee. There also is a 20 percent reduction in the fee charged to an accountholder when the annual volume of roll-in transactions exceeds 1 million transactions per year, *i.e.*, the benefits of scale are passed on to participants in the form of reduced fees. The participating plans' summary plan descriptions must fully disclose all fees and expenses under the RCH Program.<sup>7</sup> RCH additionally states that if an individual does not respond to the applicable Consent Letter, or is unreachable by phone within a 10-day window following the last day of the Consent Letter, RCH will place a sell order with the mutual fund held in the Default IRA

account. RCH will receive no sub-transfer agency fee in connection with services rendered after the settlement date set forth in the applicable mutual fund's prospectus (the Settlement Date). In no case will the Settlement Date be later than three days following the date the relevant sell order is placed. RCH has no discretion regarding the timing of the Settlement Date. Further, once RCH has identified a match that will lead to a transfer to a new employer's plan, RCH will no longer charge the IRA the monthly administrative fee.<sup>8</sup>

16. According to RCH, a computer simulation by the Employee Benefits Research Institute (EBRI) and Boston Research Technologies, suggests that the probability of the RCH program finding a missing participant in a new employer's plan is 66% (of all accounts owned by participants in the Program) in the first year, assuming that all record-keepers to plans participate in the RCH Program. That percentage increases to 85% when extending searches to subsequent years. Because these figures relate to the entire U.S. labor force, the likelihood of a match will depend on the number of record-keepers actually participating in the RCH Program. If record-keepers that participate in the RCH Program comprised 50% of the U.S. retirement market, RCH expects that approximately 33% of all accounts owned by participants in the Program would result in a match during the first year.

17. Individuals covered by the RCH Program will receive Annual Statements (Annual Statements). Among other things, the Annual Statement will: (a) Fully and accurately describe all of the fees and compensation, direct or indirect, received by RCH, related parties and participating record-keepers; (b) explain the material features of the RCH Program, and; (c) tell the individual how to contact RCH and direct RCH or the participating record-keeper to transfer the balance into the plan of their current employer or another qualified designated investment alternative (QDIA) under the QDIA regulation (29 CFR 2550.404c-5). RCH states that following the Transfer, RCH or the participating record-keeper will send the individual a confirmation that includes a description of the Transfer Fee.

<sup>7</sup> The Department expresses no view as to the reasonableness of the maximum charges set forth in this paragraph, including the Transfer Fee, and notes that RCH may not receive fees or compensation, direct or indirect, in excess of reasonable compensation within the meaning of 29 CFR 2550.408b-2 and 29 U.S. Code § 1108(b)(2).

<sup>8</sup> The fees and compensation are subject to the conditions of section 408(b)(2) of ERISA and section 4975(d)(2) of the Code. Also, to be eligible for the fiduciary safe harbor relief provided by 29 CFR 2550.404a-2 and 29 CFR 2550.404a-3 the fees and compensation associated with the maintenance of the Default IRAs must meet the conditions of those regulations.

*Exemption Request for RCH's Receipt of Transfer Fee*

18. RCH requests an exemption for the receipt of the Transfer Fee in connection with the transfer under the RCH Program, of an individual's Default IRA or Eligible Mandatory Distribution Account assets to the individual's New Plan Account, without the individual's affirmative consent. Absent affirmative consent of the IRA owner/participant, RCH acts as a fiduciary within the meaning of section 4975(e)(3) of the Code in deciding to transfer the individual's RCH default IRA to the individual's new employer plan. Similarly, absent affirmative consent of the IRA owner/participant, in situations where a default IRA maintained by a third party record keeper is transferred to an RCH default IRA acting as a conduit to facilitate the transfer to an new employer's plan, RCH acts as a fiduciary within the meaning of section 4975(e)(3) of the Code in directing the transfer of the individual's default IRA to the RCH default IRA and subsequently to the new employer's plan.

Section 4975(c)(1)(D) of the Code prohibits a fiduciary from causing a plan to engage in a transaction, if he or she knows or should know that the transaction constitutes a direct or indirect transfer to, or use by or for the benefit of, a party in interest of any assets of a plan. Section 4975(c)(1)(E) of the Code prohibits a fiduciary with respect to a plan from dealing with the assets of the plan in its own interest or for its own account.

RCH's receipt of an additional fee (the Transfer Fee) in connection with transferring assets from a Default IRA to an individual's New Plan Account, without the individual's affirmative consent, violates sections 4975(c)(1)(D) and (E) of the Code, absent an exemption.

*In the Interest of Affected Participants*

19. The Department has tentatively determined that the proposed exemption is in the interest of affected participants. In this regard, according to RCH, America's mobile workers too often receive cash distributions when they change jobs, depleting their retirement savings. RCH states that this leakage of retirement savings occurs at the highest percentages among individuals with the smallest accounts. RCH states that a significant portion of individuals who cash out small accounts are susceptible to financial exploitation. RCH posits that its Program could reduce retirement savings leakage by more than 50 percent

for these small accounts. The conditions of the proposed exemption are designed to ensure that the interest of participants, beneficiaries, and IRA owners in their retirement assets are protected and managed in accordance with the applicable provisions of ERISA and the Internal Revenue Code.

*Protective of the Rights of Participants and Beneficiaries*

20. The Department has tentatively determined that the proposed exemption is protective of affected plan participants. The RCH program, service providers, and associated fees are fully disclosed and approved by independent plan fiduciaries. All fees and compensation associated with the program are fully subject to the protections of section 408(b)(2) of ERISA and section 4975(d)(2) of the Code. In addition, RCH represents that it has no financial incentives that would lead a reasonable person to believe that it is steering accounts to custodians, service providers, or investment providers based on its own financial interests, as opposed to the interests of the plan participants and IRA owners. Also, all fees charged to the Default IRA and Eligible Mandatory Distribution Account are frozen at the time the decision is made to transfer the assets from the Default IRA or Eligible Mandatory Distribution Account to the individual's current employer plan. In addition, RCH will not include exculpatory provisions in its contracts disclaiming or limiting RCH's liability for any improper transfers from a Default IRA or Eligible Mandatory Distribution Account. The provisions of the exemption were designed with the aim of ensuring that the rights of plan participants, beneficiaries, and IRA owners are protected.

*Administratively Feasible*

21. The Department has tentatively determined that the proposed exemption is administratively feasible because all terms of the RCH Program including those governing Transfers must be clearly defined, reviewed, and contractually agreed to by the independent fiduciaries of the distributing and receiving plans. The Department notes that, as described below, an independent auditor will review the RCH Program, and submit a written report to the Department regarding the level of compliance of RCH to the notification, fee and distribution requirements of this exemption. In addition, the exemption will be subject to renewal after a five-year period. At that time, RCH will be expected to submit a new application

providing the information necessary to assess the success of the program, as well as any shortcomings. Because of these protections, it is administratively feasible for the Department to issue the exemption and administer its responsibilities in connection with the exemption.

*Department's Comment and Additional Conditions*

22. As noted above, RCH states that its Program will help achieve better overall asset allocation and eliminate duplicative fees through the consolidation of small retirement savings accounts, and that it will reduce leakage of retirement savings out of the tax-deferred retirement saving system. In proposing this exemption, the Department expects that the RCH Program will provide meaningful benefits to a significant number of individuals with Default IRAs or Eligible Mandatory Distribution Accounts. Because the RCH Program is new and the Department cannot confidently determine how successful the RCH Program will be at achieving its objectives, the Department proposes to limit the term of this exemption to five years. As part of its application to renew the exemption, RCH would be expected to provide information on the extent to which the RCH Program has provided meaningful benefits to a significant number of individuals with Default IRAs or Eligible Mandatory Distribution Accounts, including analysis of its success in matching accounts with new employers' plans. Similarly, RCH would be expected to show that asset transfers under the RCH Program were performed accurately, without undue delay, and with RCH receiving no more than the fees and compensation disclosed to, and approved by, the applicable independent plan fiduciaries.

The Department is also proposing the following additional conditions. RCH must submit to an annual audit, performed by a qualified independent auditor (an Independent Auditor), in order to protect affected Plan participants. The Independent Auditor must be a person or entity with extensive knowledge of ERISA, the Code and the types of transactions that are described in this exemption, and who is capable of reviewing and analyzing the RCH Program and the requirements of this exemption in a manner sufficient to perform the audit. The Independent Auditor may derive no more than 2 percent of its annual compensation from services provided directly or indirectly to RCH or to any of its affiliates or related parties.

An audit is necessary, in part, because the individual plan fiduciaries responsible for authorizing and monitoring Program participation would otherwise lack the information necessary to determine that the asset transfers, notices, and investments contemplated by the RCH Program have been performed in compliance with the law and in accordance with the terms of the relevant Agreements. The exemption therefore requires the Independent Auditor to review a representative sample of transactions sufficient for the Independent Auditor to determine whether: (a) The notices met the timing and content requirements of this exemption, and were written and delivered in a manner reasonably designed to ensure that affected individuals would both receive and understand the notices; (b) asset transfers were conducted in accordance with this exemption and the Agreements, and the New Plan Accounts, participants, and beneficiaries received all the assets they were due pursuant to the methodology (i) authorized in advance by independent fiduciaries of the affected Plans, and (ii) properly disclosed to affected individuals; (c) fees and compensation, direct or indirect, of any type, that RCH, related parties and participating record-keepers received in connection with the RCH Program are consistent with the fees authorized by appropriate Plan fiduciaries; were properly disclosed to the affected individuals in accordance with the terms of this exemption; did not exceed reasonable compensation, as defined in Section 408(b)(2) of ERISA, Section 4975(d)(2) of the Code and 29 CFR 2550.408c-2 of the Department's regulations; (d) individuals receiving Mandatory Distribution notices were effectively given the opportunity to opt-out by the use of a phone number that was operational and with a clearly available opt-out choice in the main menu<sup>9</sup> and (e) the other conditions of this exemption have been met.

The Auditor must complete the audit within six months following the twelve-month period to which the audit relates, and must submit a written report to the Office of Exemption Determinations within thirty days. The audit report will become a part of the public record for this exemption. The report must contain the methodology used by the Auditor and a detailed assessment of the degree

of RCH's compliance with the findings required by the audit.

23. This exemption also requires that RCH not sell or market the plan or participant data it obtains in connection with the RCH Program to third parties, nor may it use the data for any purpose other than the proper administration of the RCH Program. Further, RCH may not receive any fees or compensation, direct or indirect, from third parties other than an asset-based, sub-transfer agency fee that is paid to RCH from an IRA investment provider that is selected by an independent plan fiduciary, solely for shareholder services related to the investment options in which RCH Default IRA assets are invested under the RCH Program. RCH may not in any way, directly or indirectly, act in a manner that affects the amount of sub-transfer agency fee it receives under the Program. In this regard, the amount of sub-transfer agency fee received by RCH must result solely from written directions and written agreements between plan sponsors and investment funds that are independent of RCH, without any influence or direction from RCH.

RCH may not restrict or limit the ability of unrelated third parties to develop, market and/or maintain a locate-and-match process separate from RCH's process that facilitates the transfer of Default IRA assets or Eligible Mandatory Distribution Account assets to an individual's New Plan Account (e.g., by requiring record-keepers to exclusively use RCH for such processes). RCH may not receive more than reasonable compensation for its services within the meaning of Section 408(b)(2) of ERISA, Section 4975(d)(2) of the Code, and 29 CFR 2550.408c-2 of the Department's regulations, and RCH must comply with its obligations as a covered service provider under 29 CFR 2550.408b-2. RCH represents that it will not provide investment advice, as described in ERISA section 3(21) or Code Section 4975(e)(3) and accompanying regulations, to individuals with assets held in a Default IRA or Eligible Mandatory Distribution Account, in connection with any transaction relating to the RCH Program.

24. RCH may not include exculpatory provisions in its contracts disclaiming or limiting RCH's liability in the event that the RCH Program results in an improper transfer from a Default IRA or Eligible Mandatory Distribution Account. RCH may not improperly delay transfers from a Default IRA or Eligible Mandatory Distribution Account to a New Plan Account. In this regard, the RCH Program must query on at least a monthly basis whether a

participant with a New Plan Account in the RCH Program has a Default IRA or an Eligible Mandatory Distribution Account covered by the RCH Program. Where the RCH Program identifies a match, if the affected individual does not make a timely response to the notifications described above, the assets of the Default IRA or Eligible Mandatory Distribution Account must be immediately transferred to the participant's New Plan Account following the Settlement Date. RCH may not have any discretion under the RCH Program to affect the timing or amount of the transfer, other than to deduct the appropriate fees.

25. All fees and expenses under the RCH Program must be fully disclosed in participating plans' summary plan descriptions.

26. RCH must verify the accuracy of all participant and beneficiary data, including address and identification information, at the time assets are first transferred to a Default IRA or Eligible Mandatory Distribution Account for participation in the RCH Program. All Program-related communications to the individuals must adhere to a plain language standard, designed to ensure that affected individuals understand the communications. RCH must take all prudent actions necessary to reasonably ensure that participant and beneficiary data are current and accurate, and that the appropriate participants and beneficiaries, in fact, receive all the required notices and disclosures, until the assets are transferred pursuant under the program to a new plan. Once RCH has identified a match that will lead to a transfer to a new employer's plan, RCH will no longer charge the IRA the monthly fee.

#### Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons within 15 days of the publication of the notice of proposed temporary five-year exemption in the **Federal Register**. The notice will be provided to all interested persons in the manner agreed upon by the applicant and the Department and will contain a copy of the notice of proposed exemption as published in the **Federal Register** and a supplemental statement, as required pursuant to 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on and to request a hearing with respect to the pending exemption. All written comments and/or requests for a hearing must be received by the Department within forty-five days of the date of

<sup>9</sup> The auditor should use, among other methods, confirmations to individuals with amounts rolled over to determine whether such individuals were given an effective chance to opt-out or otherwise tried to unsuccessfully opt-out of the program.

publication of this proposed exemption in the **Federal Register**.

All comments will be made available to the public.

**Warning:** If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as a Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines.

### General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in each

application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

### Proposed Five Year Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).<sup>10</sup>

If the proposed exemption is granted, the sanctions resulting from the application of Code section 4975, by reason of sections 4975(c)(1)(D) and (E) of the Code, shall not apply to the receipt of a Transfer Fee, as defined in Section III(i), by RCH in connection with the transfer of assets from an individual's Default IRA, as defined in Section III(h), to the individual's New Plan Account, as defined in Section III(a) (the Transfer), following the individual's nonresponse to two letters informing the individual that the assets will be transferred if he or she fails to contact RCH within the later of: Sixty days of the first letter; or thirty days of the second letter. Relief under this exemption is solely available for the payment of a Transfer Fee by a Default IRA to RCH in connection with the transfer of \$5,000 or less from the Default IRA to a New Plan Account, pursuant to either a Default IRA Model Transfer, as defined in Section III(l) or a Conduit Model Transfer (as defined in Section III(k)).

#### Section I. Conditions

(a) Any and all fees and compensation, direct or indirect, associated with the Program must be fully disclosed to, and approved by, a plan fiduciary that is independent of RCH (an independent plan fiduciary) in the applicable agreement. With respect to approval of a Transfer Fee, the approval must be given prior to the transfer from the plan to the Default IRA. The fees and compensation (direct or indirect) RCH receives in connection with the transfer under the Program of a Conduit Model Transfer, as defined in Section III(k), is limited to a Transfer Fee and communication fee paid by a Default IRA. All fees and expenses under the Program must be fully

disclosed in participating plans' summary plan descriptions;

(b) RCH does not sell or market Plan or Plan participant-related data RCH accesses or obtains to third parties in connection with the Program, nor does RCH use the data for any purpose other than administration of the Program;

(c) RCH does not receive any fees or compensation, direct or indirect, from third parties other than asset-based sub-transfer agency fees paid to RCH from an IRA investment provider, where such IRA investment provider is selected by an independent plan fiduciary. The asset-based sub-transfer agency fee must be solely for shareholder services related to the investment options in which IRA assets are invested under the Program and may not exceed reasonable compensation as defined in Section 408(b)(2) of ERISA, Section 4975(d)(2) of the Code, and 29 CFR 2550.408c-2 of the Department's regulations. RCH may not receive any fees or compensation, direct or indirect, from third parties other than an asset-based, sub-transfer agency fee that is paid to RCH from an IRA investment provider that is selected by an independent plan fiduciary, solely for shareholder services related to the investment options in which IRA assets are invested under the RCH Program. Such selection must be made independent of influence, suggestion or assistance by RCH, and RCH may not in any way, directly or indirectly, act in a manner that affects the amount of sub-transfer agency fees it receives under the Program.

(d) RCH does not restrict or limit the ability of unrelated third parties to develop, market and/or maintain a locate-and-match process separate from RCH's process that facilitates the transfer of Default IRA assets or Eligible Mandatory Distribution Account assets;

(e) The disclosures described below in paragraphs (f) and (g) must be:

(1) Written in a manner calculated to be understood by the average intended recipient. To the extent reasonably possible, such disclosures must limit or eliminate technical jargon and long, complex sentences, and use clarifying examples and illustrations. No communication required by this exemption shall be made or written in a way that misleads, misinforms, or fails to properly inform the intended recipient; and

(2) sent to the last known address of the individual after RCH verifies the accuracy of the participant data (including the participant's and any beneficiary's social security number, first name, last name, middle name or initial, address, city, state, zip code, date of birth, and phone number);

<sup>10</sup> For purposes of this proposed exemption, references to the provisions of Title I of ERISA, unless otherwise specified, refer also to the corresponding provisions of the Code.



(f) *Transfers Involving RCH Default IRAs.* RCH will direct the transfer of assets from a Default IRA to a New Plan Account only after RCH furnishes the following notifications to the individual in the manner required by paragraph (e) above:

(1) *Mandatory Distribution Letter.* RCH must provide a "Mandatory Distribution Letter" to an individual who is eligible for mandatory distribution under section 401(a)(31)(B) of the Code prior to establishing a Default IRA for that individual. The Mandatory Distribution Letter is sent no later than the following business day after RCH receives the file from the plan sponsor indicating that the individual is eligible for mandatory distribution under section 401(a)(31)(B) of the Code, and must include:

(A) A description of the available Plan distribution options, including the independent Plan fiduciary's selection of the Default IRA;

(B) A notice that the individual has 30–90 days (as determined by the independent plan fiduciary) to contact RCH and specify a different distribution option before his or her account is transferred into the Default IRA;

(C) A description of how the Program works, including a description of all material Program features and a complete and accurate statement of all fees that are charged to accounts in the Program, as well as all compensation, direct or indirect, of any type received by RCH, related parties and participating record-keepers in connection with the Program;

(D) An explanation of distributions eligible for rollover treatment as required under section 402(f) of the Code;

(E) A statement that at any time the individual can direct RCH to transfer the balance into the ERISA-covered plan of his or her current employer or to another account;

(F) A statement that unless the individual specifies an alternative distribution option, the individual's plan balance will be transferred into a Default IRA;

(G) A notice that if the Locate and Match process, as defined in Section III(b), finds that the individual maintains another Plan account sponsored by his or her current employer, RCH will send the Consent Letter, described below, and seek the individual's consent to transfer assets from the Default IRA to the Plan of the individual's current employer; and

(H) A statement that the individual may opt out of the transfer by calling or writing RCH, and an explanation of how such individual can effectively opt out.

(2) *Welcome Letter.* RCH must furnish each individual a "Welcome Letter" immediately upon the transfer of assets to a Default IRA. The Welcome Letter is sent no later than the following business day after RCH receives an individual's assets in a Default IRA. The Welcome Letter must include:

(A) A notice that RCH opened an IRA on behalf of the individual;

(B) All relevant information regarding the Default IRA, including: Applicable account fees; the name of the investment fund into which the individual's assets were transferred; the fund's symbol; the total dollar amount of assets invested; the number of fund shares; and the fund share price;

(C) A trade confirmation;

(D) RCH's contact information, including toll-free numbers for the service center and on-line access instructions;

(E) A full and complete description of all fees charged to the Default IRA, and all compensation, direct or indirect, of any type, received by RCH, related parties and participating record-keepers in connection with administration of the Program;

(F) A notice that the individual may contact RCH and transfer his or her balance from the Default IRA to another account at any time before RCH locates and verifies the individual's account at the plan sponsored by his or her current employer;

(G) A statement that RCH will not transfer the Default IRA for at least 60 days from the date of the Welcome Letter. The notice shall further state that if the individual takes no action within the 60 days, and if the Locate and Match process finds that the individual maintains a New Plan Account, RCH will send the Consent Letter and seek the individual's consent to transfer the assets of the Default IRA to the plan of the individual's new employer. The notice will also state that if the individual fails to contact RCH within 30 days of receiving the Consent Letter, RCH will transfer the Default IRA balances to the Plan of the individual's current employer.

(3) *Annual Statements.* At least annually, RCH must furnish an "Annual Statement" to the individual which includes a description of:

(A) All fees the account will pay under the Program and a description of all the Program's material features, including a complete and accurate statement of all compensation, direct or indirect, of any type, received by RCH, related parties and participating record-keepers in connection with the Program;

(B) A statement that the individual may contact RCH and direct RCH to

transfer the balance into the Plan of his or her current employer or another account if he or she contacts RCH before RCH locates the individual's account at their new employer plan; and

(C) A statement that if the Locate and Match process finds that the individual maintains another individual account plan at his or her current employer, RCH will send the Consent Letter and seek the individual's consent to transfer the assets of the Default IRA to the plan sponsored by the individual's current employer. The notice will also state that if the individual fails to contact RCH within 30 days of receiving the Consent Letter, RCH will transfer the Default IRA balances to the plan sponsored by the individual's current employer.

(4) *Consent Letter.* For transfers of assets from a Default IRA to the New Plan Account, no later than the following business day after verification through the Locate and Match Process that the individual has opened a New Plan Account, RCH must send the Consent Letter, which must include:

(A) A notification that the individual's Default IRA has been matched with the individual's New Plan Account;

(B) A request for the individual's consent to transfer the assets from the Default IRA to the New Plan Account. The Consent Letter will also state that if the individual fails to contact RCH within 30 days of receipt of the Consent Letter, RCH will transfer the Default IRA balances to the plan sponsored by the individual's current employer.

(C) A statement of all fees and other compensation, direct or indirect, of any type, associated with the Program and with the transfer of assets to the Plan sponsored by his or her current employer.

(g) *Other Transfers.* Assets will be transferred from an Eligible Mandatory Distribution Account to a RCH Default IRA and then to a New Plan Account, or from a non-RCH Default IRA to an RCH Default IRA and then to a New Plan Account, only after the following notifications are provided to the individual in the manner required by paragraph (e) above: (1) A Mandatory Distribution Letter that is sent when it is determined under the RCH Program that an individual on whose behalf a non-RCH Default IRA has been established, or an Eligible Mandatory Distribution Account has been maintained at a prior employer, has opened a New Plan Account at the individual's current employer. The Mandatory Distribution Letter will contain the information described in paragraph (f), as applicable, and will note that if the individual fails to



contact RCH within 60 days of the Consent Letter described below, the individual's account balance will be transferred to the plan of the individual's current employer through an RCH Safe Harbor IRA unless the individual opts out of the transfer;

(2) A Consent Letter is sent when the RCH Program determines that an individual on whose behalf a non-RCH Default IRA has been established, or on whose behalf an Eligible Mandatory Distribution Account is maintained at a prior employer, has opened a New Plan Account at the individual's current employer. The Consent Letter will fully state the fees and other compensation, direct or indirect, of any type, associated with the RCH Program, and will explain that if the individual fails to opt out of the RCH Program within 60 days of receiving the Consent Letter, the assets will be transferred to the New Plan Account.

(3) Another Consent Letter is sent if, after 30 days following the first Consent Letter, the participant has not contacted RCH with instructions to opt in or opt out of the RCH Program. The Consent Letter will explain that, unless the individual opts out of the RCH Program within 30 days of receiving the letter, RCH will direct the transfer of the assets to the New Plan Account;

(h) The Plan maintaining the New Plan Account and the Plan maintaining the Eligible Mandatory Distribution Account are each a qualified retirement plan as described under section 401(a) of the Code;

(i) The Plan maintaining the New Plan Account has authorized the transfer of assets from other qualified retirement accounts;

(j) Amounts transferred under the Program to the New Plan Account will be automatically invested according to the individual's current investment elections under the terms of the Plan or, if no such elections were made, under the qualified default investment alternative as defined under ERISA section 404(c)(5) and established under the terms of the Plan;

(k) The RCH Default does not incur any fees or charges, direct or indirect, after the Program identifies a match with between a New Plan Account, except for the Transfer Fee and communication fee;

(l) RCH submits to an annual audit, performed by a qualified independent auditor, as defined in Section III(j). The auditor must review a representative sample of transactions and related undertakings, sufficient for the auditor to make the following determinations:

(1) Whether the notices met the timing and content requirements of this

exemption, and were written and delivered in a manner reasonably designed to ensure that affected individuals would both receive and understand the notices;

(2) Whether the asset transfers were conducted in accordance with this exemption and the applicable written agreement, and the New Plan Accounts, participants, and beneficiaries received all the assets they were due;

(3) Whether the fees and compensation, direct or indirect, of any type, received by RCH, related parties and participating record-keepers in connection with the Program are consistent with the fees authorized by appropriate Plan fiduciaries; were properly disclosed to the affected individuals in accordance with the terms of this exemption; and did not exceed reasonable compensation, as defined in Section 408(b)(2) of ERISA, Section 4975(d)(2) of the Code, and 29 CFR 2550.408c-2 of the Department's regulations;

(4) Whether individuals receiving Mandatory Distribution notices were effectively given the opportunity to opt-out by the use of a phone number that was operational and with a clearly available opt-out choice in the main menu; and

(5) Whether the conditions of this exemption have been met;

(m) The Auditor must complete the audit within 6 months following the 12-month period to which the audit relates, and the Auditor must submit a written report to the Office of Exemption Determinations within 30 days of completion detailing its findings, and the report will be part of the public record for this exemption. The written report must describe the Auditor's methodology in performing the Audit and must contain a detailed description of the Auditor's findings;

(n) RCH does not include exculpatory provisions in its contracts disclaiming or limiting RCH's liability in the event that the RCH Program results in an improper transfer from a Default IRA or Eligible Mandatory Distribution Account; and

(o) RCH does not provide investment advice, as described in ERISA section 3(21) or Code Section 4975(e)(3) and accompanying regulations, with respect to the assets held in a Default IRA or Eligible Mandatory Distribution Account;

(p) The Program queries on at least a monthly basis whether a participant with a New Plan Account in the Program has either a Default IRA or an Eligible Mandatory Distribution Account covered by the Program. If the Program identifies a match, and the

affected individual does not respond in a timely manner to the required notifications, RCH will immediately direct the transfer of the assets of the Default IRA or Eligible Mandatory Distribution Account to the participant's New Plan Account following the Settlement Date, as defined in Section III(m). RCH does not have discretion under the RCH Program to affect the timing or amount of the transfer, other than to deduct the appropriate fees;

(q) All fees and expenses under the Program must be fully disclosed in participating plans' summary plan descriptions;

(r) RCH verifies the accuracy of all participant and beneficiary data, including address and identification information, when assets are first transferred to a Default IRA or Eligible Mandatory Distribution Account;

(s) RCH takes all prudent actions necessary to reasonably ensure that participant and beneficiary data are current and accurate, and that the appropriate participants and beneficiaries, in fact, receive all the required notices and disclosures, until the assets are transferred under the Program to a New Plan Account; and

(t) RCH may not receive a Transfer Fee in connection with a roll-in transaction to an ERISA-covered Plan sponsored or maintained by RCH.

## *Section II. Record-Keeping Requirements*

(a) RCH maintains for 6 years the records necessary to enable the persons described below to determine whether the conditions of this exemption have been met, except that:

(1) A prohibited transaction will not be considered to have occurred if, solely because of circumstances beyond the control of RCH, the records are lost or destroyed before the 6-year period ends; and

(2) No party in interest other than RCH will be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained or are not available for examination as required below:

(b)(1) Except as provided in Section II(b)(2) and notwithstanding any provisions of section 504(a)(2) of the Act, the records referred to in Section II(a) are unconditionally available at their customary location for examination during normal business hours by:

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(ii) Any individual or fiduciary of a Plan participating in the Program; and

(iii) None of the persons described in Section II(b)(1)(ii) shall be authorized to examine trade secrets of RCH, or commercial or financial information which is privileged or confidential.

### Section III. Definitions

(a) The term “New Plan Account” means any account maintained by a Plan that has received contributions or experienced investment activity within the preceding three months and is held for the benefit of an individual that maintains active employment with the plan sponsor;

(b) The term “Locate and Match” means the technological process relied upon by RCH and participating record-keepers to identify multiple accounts maintained by the same individual.

(c) The term “Eligible Mandatory Distribution Account” means an account with assets that is eligible for mandatory distribution under section 401(a)(31) of the Code at the individual’s prior employer plan;

(d) The term “Plan” means an individual account defined contribution plan that satisfies the automatic rollover rules under 29 CFR 2550.404a-2 or 3;

(e) The term “Program” means the RCH Auto Portability Program as it is described in this exemption and as it applies to Eligible Mandatory Distribution Accounts and Default IRAs, as defined in this section;

(f) The term, “RCH” means Retirement Clearinghouse LLC or any affiliates;

(g) The term “record-keeper” means record-keepers that are independent of RCH and any Affiliates of the record-keepers who elect to participate in the Program.

(h) The term “Default IRA” means an individual retirement account with assets that is described in Section 408(a) of the Code and established pursuant to, and satisfies the requirements of, Section 401(a)(31) of the Code and regulations at 29 CFR 2550.404a-2;

(i) The term “Transfer Fee” means the fee paid to RCH for processing the transfer of assets from the Default IRA or Eligible Mandatory Distribution Account to the Current Plan Participant Account.

(j) The term “Independent Auditor” means a person or entity with extensive knowledge of ERISA, the Code and the types of transactions described in this

exemption, and who is capable of reviewing and analyzing the Program and the requirements of this exemption in a manner sufficient to perform the audit. The Independent Auditor may derive no more than 2 percent of its annual compensation from services provided directly or indirectly to RCH or any of its affiliates or related parties;

(k) In a “Conduit Model Transfer,” RCH first transfers an individual’s assets from either an Eligible Mandatory Distribution Account or a non-RCH default IRA to an RCH default IRA, and then transfers the assets to a New Plan Account based upon the RCH Program’s determination that the individual has opened a New Plan Account at the individual’s current employer;

(l) In an “RCH Default IRA Model Transfer,” the plan transfers an individual’s assets to an RCH Default IRA, and RCH transfers the assets to a New Plan Account based upon the RCH Program’s determination that the individual has opened a New Plan Account at the individual’s current employer;

(m) The term “Settlement Date” means the settlement date set forth in an applicable mutual fund’s prospectus. In no case will the Settlement Date be later than three days after the date the relevant sell order is placed. RCH has no discretion regarding the timing of the Settlement Date.

(n) An “affiliate” of a person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(o) The term “control” means the power to exercise a controlling influence over the management or policies of a person other than an individual.

Signed at Washington, DC, this 2nd day of November 2018.

**Lyssa Hall,**

*Director, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.*

[FR Doc. 2018-24377 Filed 11-6-18; 8:45 am]

**BILLING CODE 4510-29-P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Post-Initial Determinations Regarding Eligibility To Apply for Trade Adjustment Assistance

In accordance with Sections 223 and 284 (19 U.S.C. 2273 and 2395) of the Trade Act of 1974 (19 U.S.C. 2271, *et seq.*) (“Act”), as amended, the Department of Labor herein presents Notice of Affirmative Determinations Regarding Application for Reconsideration, summaries of Negative Determinations Regarding Applications for Reconsideration, summaries of Revised Certifications of Eligibility, summaries of Revised Determinations (after Affirmative Determination Regarding Application for Reconsideration), summaries of Negative Determinations (after Affirmative Determination Regarding Application for Reconsideration), summaries of Revised Determinations (on remand from the Court of International Trade), and summaries of Negative Determinations (on remand from the Court of International Trade) regarding eligibility to apply for trade adjustment assistance under Chapter 2 of the Act (“TAA”) for workers by (TA-W) number issued during the period of *August 20, 2018 through September 14, 2018*. Post-initial determinations are issued after a petition has been certified or denied. A post-initial determination may revise a certification, or modify or affirm a negative determination.

#### Affirmative Determinations Regarding Applications for Reconsideration

The following Applications for Reconsideration have been received and granted. See 29 CFR 90.18(d).

The group of workers or other persons showing an interest in the proceedings may provide written submissions to show why the determination under reconsideration should or should not be modified. The submissions must be sent no later than ten days after publication in **Federal Register**, to the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N-5428, 200 Constitution Avenue NW, Washington, DC 20210. See 29 CFR 90.18(f).

TA-W No.	Subject firm	Location
93,624 .....	Georgia-Pacific Consumer Operations LLC .....	Camas, WA.