PENSION RIGHTS CENTER

PROTECTING AND PROMOTING RETIREMENT SECURITY
1730 M Street, NW, Suite 1000 | Washington, DC 20036
P: 202-296-3776 | F: 202-833-2472 | www.pensionrights.org

January 10, 2019

Submitted electronically to e-oed@dol.gov

Employee Benefits Security Administration
Office of Exempt Determinations
U.S. Department of Labor
200 Constitution Avenue NW
Suite 400
Washington, DC 20210

Attention: Application D-11938
Proposed Exemption Involving Retirement Clearinghouse, LLC

The Pension Rights Center appreciates the opportunity to submit comments on the proposed exemption to the prohibited transaction provisions of ERISA to permit the Retirement Clearinghouse, LLC to impose a transfer fee on participant accounts without express permission. The Pension Rights Center is a nonprofit consumer organization that has been working since 1976 to protect and promote the retirement security of American workers, retirees and their families.

We have some concerns about the proposed exemption. The Retirement Clearinghouse (RCH) proposes a new program with the goal of consolidating small accounts for participants. The program is complex, involving multiple parties under differing jurisdictions and the imposition of multiple fees on small accounts. While the goal of the program is commendable, it is not clear that, as proposed, the RCH program and its associated fees, will prove beneficial to participants. To better inform and protect participants we recommend that the conditions of the proposed exemption be more specific in several areas.

DISCLOSURE

The RCH proposal places heavy reliance on disclosure to participants who must respond to notices. The exemption could be more specific about disclosures. Although the RCH program seeks to consolidate accounts and relies on the evidence that people often do not change default systems, account holders should be fully informed of their rights to place their accounts with another IRA provider or to cash out on demand.

- The exemption does not clearly state that distribution notices at termination of employment must conform to the notice requirements, including timing and method of delivery, specified in ERISA and the Code. To the extent that the Mandatory Distribution Letter is designed to be the notice of distribution options at termination of employment, the notice should make it clear that all options are available, including receiving a distribution in cash.

- The exemption could be more specific in identifying the respective roles of the employer and of RCH at termination of employment. At termination of employment participants need good information on areas of responsibility and whom to contact with questions.

- Some small account holders may already have an IRA or other retirement account. Notice to participants who are subject to automatic rollovers should include information about their option to combine their retirement accounts.

- It would benefit participants if all notices in the RCH program contained a reminder that participants should retain the notice for their records and keep RCH informed of any changes in address. Perhaps the exemption could specifically include this requirement.

- The exemption does not address the problem of notices returned for wrong address. Is there any obligation for RCH to search for or to report "missing" participants?

- Participants who wish to withdraw from the RCH program should be provided with an easy way to opt out. However, reliance on a phone system may not work for some participants. Perhaps the exemption could require that RCH accept opt-outs in writing and provide an address and contact person for opt-outs or other account changes.

- The RCH program requirement that plans include RCH in the plan's SPD may not be in the best interests of participants. Although it is important for small account holders to combine their assets, the RCH program may not be the only available option. Including the RCH program in a plan's SPD indicates that the program is preferred by the employer. Participants may not give equal weight to other distribution options, or may not fully realize there are other options, when an employer endorses the RCH program.

FEES

The RCH program includes five fees which could significantly reduce a small account balance. We recommend that the Labor Department consider imposing limits on some of the fees, particularly the monthly administration fee and the transfer and communication fees to be assessed after RCH identifies a new employer. Limits could be stated as a percent of the account balance and graduated accordingly. Reliance on an independent plan fiduciary to approve fees may not be sufficient to protect very small accounts. There is also a concern that distribution fees could be set so high that they discourage participants from requesting a distribution.

RECORD KEEPING REQUIREMENTS

We recommend that the exemption include a statement that participant records must be maintained until the accounts are distributed. If RCH terminates the program, RCH will be responsible for notifying all remaining participants of the termination and providing relevant information about individual accounts.

APPEALS PROCEDURE

Since mistakes inevitably happen, we recommend that the exemption require an appeals procedure for mistakes or disputes. The appeals procedure, as well as applicable legal remedies, could be included in all RCH notices. Records of appeals approved or denied could be reported to the independent plan fiduciary and included in any evaluation of the RCH program.

CONCLUSION

The Center supports limiting the exemption, if granted, to five years. After five years the Labor Department will be in a position to review the RCH program, based on audits and reports of the independent plan fiduciary, to determine whether the program served the interests of plan participants.

If you have questions about these comments you may contact Jane Smith at 202-296-3776.

Sincerely,

Jane T Smith

Jane T. Smith
Policy Analyst