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FINANCIAL SERVICES ROUNDTABLE

October 23, 2015

Ms. Kimberly S. Reese
Bureau of the Fiscal Service
Department of the Treasury
200 Third Street, Room 402
Parkersburg, WV 26106
kimberly.reese@fiscal.treasury.gov

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

Dear Ms. Reese,

The Securities Industry and Financial Markets Association ("SIFMA")[1], the American Bankers Association ("ABA")[2], and the Financial Services Roundtable ("FSR")[3] appreciate the opportunity to provide comments regarding the Department of the Treasury ("Treasury") request for comment on the process for transferring *my*RA© account balances to private sector Roth IRAs. We support the *my*RA's goal of encouraging retirement savings for those without access to an employer-sponsored retirement plan and others looking to supplement their saving. To facilitate the eventual transition of these accounts to the private sector, we offer the following comments and requests for specific guidance.

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[1] SIFMA is the voice of the U.S. securities industry, representing the broker-dealers, banks and asset managers whose 889,000 employees provide access to the capital markets, raising over $2.4 trillion for businesses and municipalities in the U.S., serving clients with over $16 trillion in assets and managing more than $62 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.

[2] The American Bankers Association is the voice of the nation's $15 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard $12 trillion in deposits and extend more than $8 trillion in loans.

[3] As *advocates for a strong financial future*™, FSR represents the largest integrated financial services companies providing banking, insurance, payment and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. FSR member companies provide fuel for America's economic engine, accounting directly for $92.7 trillion in managed assets, $1.2 trillion in revenue, and 2.3 million jobs. More information on FSR is available at http://fsroundtable.org/.

From a service provider perspective, there are inherent risks to having account balances defaulted when an account holder fails to provide instructions for a rollover, and there are certain factors that may make a Roth IRA provider unwilling to be selected to receive automatically transferred *my*RA account balances. Given these potential challenges, SIFMA, ABA, and FSR believe there are a number of issues Treasury should take into account before considering any default arrangement; these are outlined below in detail.

Inactive or Dormant Account Holders

As our members can attest, an account holder on occasion may forget about an account he or she has opened, as may be the case with the *my*RA program. If the account holder's listed address, bank account information, or designated beneficiary is incorrect, the service provider may incur increased costs for forwarding mail and search efforts, as well as compromised tax reporting and distribution efforts upon death. This lack of current information may also raise concerns relating to anti-money laundering, know your customer ("KYC"), and related Bank Secrecy Act ("BSA") rules.

SIFMA, ABA, and FSR request that Treasury provide clear guidance so that the defaulted provider who receives the *my*RA account holder does not have to treat the account owner as a missing participant, or, alternatively, require acknowledgement from the account holder prior to a default account transfer. To further help alleviate the percentage of inactive accounts upon transfer, Treasury could coordinate with the Social Security Administration to match a dormant account holders' Social Security Numbers with those individuals receiving Social Security. In order for a potential provider to be comfortable receiving such accounts, Treasury may need to issue guidance with regard to abandoned property. This could increase escheatment burdens to the service provider as it would be problematic to transfer an abandoned *my*RA account into a Roth IRA (which has no required minimum distribution requirement). This could lead to a situation where the provider cannot escheat at all and must hold the account indefinitely as the account depletes its balance through annual fees.

Furthermore, transfers of former employees' retirement accounts from a company's 401(k) plan to a financial institution without their consent or signature fall under the automatic rollover safe harbor provision of section 657© of the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"). We suggest that Treasury consider adopting similar safe harbor default investment rules for the *my*RA program.

In addition, in January 2004, FinCEN provided guidance on customer identification regulations, related to the opening of an account for the benefit of a former employee of a retirement plan without the customer's consent or signature, as it related to (1) automatic rollovers under sec 657(c) of EGTRRA, and (2) participants of a terminated plan where the administrator has been unable to locate the participant or who has not responded by the deadline. FinCEN provided relief from Customer Identification Program ("CIP") requirements

in certain circumstances that fit into this context.[4] We also ask that Treasury explicitly allow the defaulted provider to rely on the *my*RA CIP when the account is first established and not require a full customer due diligence when receiving the account. Similarly, we ask that Treasury acknowledge that these accounts are low risk from a BSA-AML perspective.

Regulatory and Legal Issues

Treasury may also need to consider how a default rollover interacts with the recent *Bobrow* decision to allow only one-rollover-per-year for each individual. This automatic rollover to a private sector Roth IRA should not count towards the one-rollover-per-year. It should be treated as a direct transfer. Guidance consistent with this idea would avoid additional complications for individuals who may be inactive account holders and unaware that their *my*RA account balance is being transferred.

In the private sector, if an IRA is transferred from one custodian to another, the account holder typically must sign a new account agreement with the new institution. For automatic transfers, it is unclear whether the Financial Industry Regulatory Authority ("FINRA") will require a brokerage application to be completed. The opening of a new brokerage account requires paperwork to be completed, and there are decisions an individual needs to make, including how transactions will be paid for, how any uninvested cash will be managed, and who will have control over the account. Account applications also include arbitration agreements that must be signed by the customer. In a default situation, the account holder may not be available to answer these questions and complete required paperwork. Based solely on the default account information Treasury would provide, it is not likely that information would be sufficient under KYC and suitability rules. Additionally, there are required disclosures at account opening which presumably would need to be mailed to the defaulted account holder. This raises the question of whether mailing the disclosure is sufficient to start the clock on the IRA owner's 7-day right to revoke the IRA. Absent clarity, service providers may not be comfortable receiving default account funds due to the liability of a potential refund of all fees and expenses to the account owner at a later date. We suggest that Treasury require the taxpayer's consent to this arrangement within the *my*RA account opening process and that Treasury request additional necessary information needed for account opening.

Similarly, when an IRA account is transferred to a bank, the account holder must receive and sign an adoption agreement with that institution. If the bank cannot track down the account holder because the address or phone number is not current, the account could be affected. We therefore request that in these situations Treasury allow the account to remain an IRA in good standing even though these account documents cannot be completed.

There are further concerns regarding how this regulatory framework will coincide with

[4] FinCEN Guidance on Customer Information Regulations, January 2004

other regulatory changes under consideration in the retirement savings space, namely the Department of Labor ("DOL") proposal to amend the definition of fiduciary. There are concerns that the changes proposed by DOL may force a shift from commission-based accounts to advisory-fee or "wrap" accounts, a structure which would likely be too expensive for such small accounts. The DOL is also considering the creation of a "best interest contract" which the client would need to sign prior to opening an IRA. In the case of an automatic default transfer from a *my*RA account to a Roth IRA, it is unclear how such a contract would be facilitated and the requirements under a new regulatory framework would be satisfied.

Transfer of Money

To facilitate the transfers of accounts, Treasury should encourage account holders to move their account as a trustee-to-trustee transfer through ACH, ACAT, or some other electronic transfer system. The existing protocols for ACH and ACAT may need to be enhanced to complete these transfers more smoothly. For example, when using the ACAT system, there may be problems regarding the registration type of transferring from a *my*RA account to a Roth IRA, since these would presumably be two separate registration types in the system and could cause the system to reject the transfer. Furthermore, ACAT transfers are initiated using positive client consent with transfer instructions. If Treasury intends to transfer myRA account balances to Roth IRA providers through a negative consent default, one option could be to leverage the National Securities Clearing Corporation ("NSCC") bulk tape-to-tape transfer feature, although such a feature is best if the single provider approach is used because of the associated cost. Other unique problems may arise if Treasury determines a check should be the method of transfer instead – namely the increased likelihood of lost checks and longer time to move the account.

Treasury should devote some effort toward making these transfers, whether they are automatic or initiated by the account holder, run as smoothly as possible. SIFMA, ABA, and FSR would like to work with Treasury to ensure the transfer of funds is not a barrier to these arrangements.

Guidelines or Conditions for Selected Providers

We understand the need for Treasury to establish certain requirements of the selected providers eligible to receive automatic transfers. However, given the changing nature of the business and legal environment, it would be best to establish the guidelines or conditions for a determined period and not make them indefinite. Firms may decide to exit the IRA business or may merge with another institution that does not want to carry on the business. The period should be sufficiently long to allow both parties to rely on its terms and make strategic business decisions.

Education and Notice to *my*RA Account Holders

Appropriate education and adequate notification to the *my*RA account holder is a key element to facilitating a smooth transition to a private sector Roth IRA. We recommend that Treasury begin notifying account holders that they are approaching the *my*RA limit when the account reaches $10,000. These notifications can be made by email and mail and provide the account holder a list of possible IRA custodians. However, while there will likely be many service providers willing to accept *my*RA account balances when affirmatively chosen, the universe of service providers that would be willing to accept defaulted funds will be much smaller.

As part of the notification process, Treasury has asked if the financial agent should include a list of available Roth IRA providers to help account holders choose their own provider, and if that list should be in addition to a list of provider(s) selected to receive automatic transfers. SIFMA, ABA, and FSR believe it is important to include both lists and to adequately delineate between the two lists, since the latter will likely be a much smaller list than the former. Inclusion of both lists will encourage an account holder to take action with regard to the transfer of funds.

Approaches

Treasury has requested feedback on the various approaches under consideration – rotating provider approach, single-provider approach, or other potential approaches. While we are not in a position to recommend one approach over another, we want to raise some additional points for consideration that could present challenges or opportunities as Treasury moves forward.

One concern is that under a rotating provider approach, there may be cases where clients within the same household could end up with different private sector firms, which could further disincentivize inactive account holders from managing their assets. A potential solution may be to require customers to provide the name and address of their financial advisor or preferred service provider at the opening of the *my*RA account. Although it might be difficult to maintain that information for up to 30 years, it may help reduce the number of default transfers. Treasury could annually send a statement of account information, asking the client to verify that the information is still correct. Any updates would be returned to Treasury and maintained. This process could also be used to keep addresses, emails, and phone numbers, in addition to the selected private sector financial provider to receive the *my*RA when the transfer threshold is met.

Another potential approach would be in lieu of a default transfer, Treasury could institute a process similar to the resignation of trustee/custodian procedures that IRAs currently follow and are already consistent in the industry. Under this alternative, a notice would be provided 30 days prior to resignation requesting the appointment of a successor custodian/trustee. Second, if no successor is appointed, the custodian/trustee has the right to terminate the account and distribute to the participant. Since the *my*RA is a Roth IRA, only the earnings would be taxable

and the client would have 60 days to roll over the balances to avoid any tax liability. Many times the notice of a taxable event will serve as a catalyst for action.

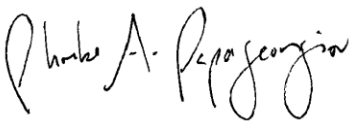
Low Balance Accounts

While the transfer threshold of $15,000 is already quite low, the account balances of an account holder who does not provide transfer instructions by the 30-year threshold could potentially be much smaller. For example, an account holder in this situation may have created a *my*RA account, contributed for a short period of time, and then let the investment sit for years without making further contributions. There is concern that, upon transfer, such a small account will cost more to administer than the earnings it generates, and the custodial fees of the new Roth IRA may deplete the account holdings and not be the best option for the investor. Furthermore, the default investment option would arguably need to be a relatively low-risk (and therefore potentially low-income generating) investment, potentially eroding account balances further. Service providers would need to create new IRA agreements in order to accommodate default investments. SIFMA, ABA, and FSR request that Treasury consider establishing or designating a "safe harbor" default investment option to ease liability concerns among defaulted Roth IRA service providers. In addition, Treasury should consider establishing a *de minimis* account threshold of a nominal amount under which the account could be terminated at the 30 year threshold and the proceeds sent to the account holder, similar to 401(k) low balance force out guidelines.

We appreciate your consideration of our comments regarding this innovative savings tool. Please do not hesitate to contact Lisa Bleier (lbleier@sifma.org), Phoebe Papageorgiou (phoebe@aba.com), or Richard Foster (Richard.Foster@FSRoundtable.org) if you have any questions or if we can be of further assistance.

Sincerely,

Lisa J. Bleier
Managing Director &
Associate General Counsel
SIFMA



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