



March 28, 2024

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

**Re: Automatic Portability Transaction
Regulations, RIN 1210-AC21**

Dear Secretary Gomez,

SIFMA¹ appreciates the opportunity to provide comments regarding the Department of Labor’s (the “Department”) proposed Automatic Portability Transaction Regulations under Section 4975 of the Internal Revenue Code of 1986 (“Code”). These regulations are designed to implement Section 120 of the SECURE 2.0 Act of 2022 (“Act”).² Within this proposed exemption, the Department has included a provision relating to foreign crimes that is outside the Department’s statutory authority and should be deleted.

Congress carefully delineated all of the requirements of the statutory exemption. While the statute gives the Secretary of Labor the authority to issue such guidance as may be necessary to carry out the purposes of the amendments made by the Act, it does not give the Secretary the

¹ SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry’s nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

² SECURE 2.0 adds a new prohibited transaction exemption to Section 4975 for automatic portability transactions. An automatic portability transaction is a transaction where mandatory distributions pursuant to Code section 401(a)(31)(B)(i) from an employer sponsored retirement plan are subsequently transferred to an eligible employer-sponsored plan in which such individual is an active participant.

authority to change the requirements in ways not contemplated by the Act. On the subject of corrective actions, the Act is extremely specific:

(c)(9) provide for correction procedures in the event an auditor determines the automatic portability provider was not in compliance with this provision and related regulations as specified in paragraph (12)(B)(ix)(II) of section 4975(f) of such Code, as so added, including deadlines, supplemental audits and correction actions which may include a temporary prohibition from relying on the exemption provided by paragraph 25 of section 4975(d) of such Code, as added by this section,

Nowhere in the Act did Congress refer to criminal acts by a provider's affiliates as a reason for corrective actions. Congress did not even include a criminal act by a provider itself as a reason for corrective action. The Department should not substitute its judgement for the carefully drawn language of a statute enacted less than 15 months ago. Congress could have said, "including but not limited to" a failure to comply with the provision. It did not. Congress could have specifically referred to criminal disqualification. It did not.

The Department's authority is limited to implementation of a very specific and narrowly tailored statutory exemption. The preamble offers no explanation of why the provision was added to the narrow statutory list of reasons for corrective action. Indeed, the Department's only explanation relates to foreign crimes, which the Department included despite its acknowledgement that it was effectively unnecessary.³ The criminal conviction correction provision in the regulation is an unauthorized overreach of executive authority, and must be deleted.⁴

We look forward to working together with the Department as they consider our comments regarding the notice. Please do not hesitate to contact me at lbleier@sifma.org or (202) 962-7329 if you have any questions.

Sincerely,

Lisa J. Bleier

³ See Footnote 39, 89 FR 5635, January 29, 2024.

⁴ See Chamber of Commerce v. Acosta, 885 F.3d 360 (5th Cir. 2018).