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DOL Releases Proposed Regulation On Automatic Portability Transactions



The Employee Benefits Security Administration of the Department of Labor (DOL) recently released [a proposed regulation on automatic portability transactions](#) under [SECURE 2.0 Act of 2022](#). The goal of automatic portability transactions is to help workers keep track of their retirement savings

accounts and improve retirement security by reducing cash-outs when they change jobs.

According to the most recent annual Form 5500 data, there are an estimated 635,000 defined contribution plans in the United States, covering an estimated 86.6 million participants with account balances totaling \$9.3 trillion in assets.

When workers leave jobs with a retirement benefit valued at \$7,000 or less, their savings plan can automatically rollover their benefits to a Safe Harbor IRA if the plan document allows it and the employee does not take action after receiving required notices. Auto-portability transactions involve automatically transferring workers' retirement savings from their Safe Harbor IRA to their active account in a retirement plan sponsored by their new employer.

The department's proposed rule would implement Section 120 of the SECURE 2.0 Act, which allows an automatic portability provider to receive a fee in connection with executing an automatic portability transaction for

certain distributions into Safe Harbor IRAs, through an added exemption to Internal Revenue Code section 4975.

The proposal covers the eleven specific topics identified in the statutory exemption for regulations or other guidance to carry out the purposes of the auto-portability amendments.

The proposed regulation tracks the requirements under the statutory exemption that must be satisfied for the automatic portability transaction to be covered by the exemption. These topics include, among others:

- Scope of the exemption.
- Disclosures about automatic portability transactions, fees, compensation, and services, including an acknowledgement of the automatic portability provider's fiduciary status, website requirements for the automatic portability provider, and a requirement that disclosures be written in a culturally and linguistically appropriate manner.
- Investments permitted in connection with automatic portability transactions.
- Restriction on receipt or payment of third-party compensation by an automatic portability provider in connection with an automatic portability transaction.
- Prohibition on exculpatory provisions disclaiming or limiting liability if an automatic portability transaction results in an improper transfer.
- Required actions to ensure that participant and beneficiary data is current, accurate and secure.

Limitations on the use of data related to automatic portability transactions for any purpose other than to execute such transactions or locate missing participants.

- Record retention requirements.
- Annual audit and corrections procedures if an auditor determines the automatic portability provider did not comply with the requirements of the statutory exemption and the proposed regulation.


[The Notice of Proposed Rulemaking posted on the department's website](#) and will be published in the Federal Register with a 60-day public comment period and instructions on how to submit comments.



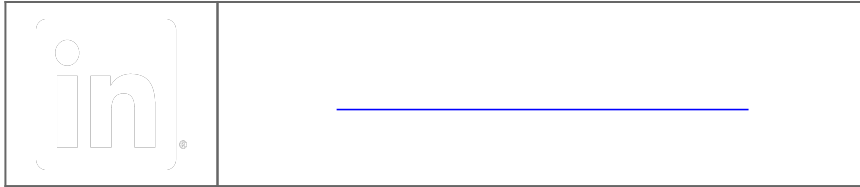
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Who We Are

Torrillo & Associates, LLC specializes in employee benefit plan audits including 401k audits, 403b audits, pension plan audits, and other retirement plan audits. We are licensed in 10 states including Pennsylvania, New Jersey, Delaware, New York and Florida. We are also able to practice in additional states that have passed firm mobility.

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