



Congress of the United States
House of Representatives
Washington, DC 20515

June 24, 2020

The Honorable Eugene Scalia
Secretary of Labor
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

Dear Secretary Scalia:

Last year, Congress passed the most important retirement legislation in over a decade, the Setting Every Community Up for Retirement Enhancement Act of 2019 (the SECURE Act). Thanks to this legislation, millions of hard-working Americans will now have access to retirement plans at work, helping them prepare for a financially secure retirement.

One of the centerpieces of the SECURE Act is a provision to allow unrelated small employers to join together in an “open multiple employer plan,” called a pooled employer plan (PEP) under the law. This provision will allow small employers to achieve the economies of scale available to large employers, thus reducing costs and expanding coverage among small employers.

In this regard, I am concerned about the Request for Information published by the Department of Labor (Department) on June 18, Docket ID number: EBSA-2020-0001, stating that the Department is seeking information about (1) possible conflicts of interest that financial institutions may have in operating PEPs and other multiple employer plans, and (2) the possible need to provide prohibited transaction exemptions to permit these conflicts of interest to exist.

In my view, any conflicts of interest would be entirely inconsistent with congressional intent. Congressional intent with respect to this provision is that the pooled plan provider should not be the fiduciary responsible for overseeing itself as the provider of investment products and services to the plan. No financial institution should be overseeing itself.

During consideration of the SECURE Act, the suggestion that conflicts of interest be permitted was proposed to the Congress on many occasions. This idea was repeatedly rejected as is clear in the statutory language enacted that did not include any exemptions permitting conflicts of

interest. Now, less than six months later, the Department is considering an idea specifically and repeatedly rejected by Congress.

The Department should not consider promoting and permitting conflicts of interest. My understanding is that many retirement plan service providers have for many years run multiple employer plans without conflicts of interest. Moreover, I further understand that these conflict-free arrangements are actively being adapted to form conflict-free PEPs, which become effective in 2021. With flourishing conflict-free business models in existence and being developed, the Department should reconsider permitting conflicts of interest that can undermine the interests of both plan participants and small businesses.

I ask that you not allow harmful and unnecessary conflicts of interest to undermine PEPs, a centerpiece of this landmark legislation. Hard-working Americans and the small businesses of this country deserve better.

Thank you for your consideration to this matter. If you have any questions, please contact Kara Getz from my Ways & Means Committee staff at 202-226-6781 or kara.getz@mail.house.gov.

Sincerely,



Richard E. Neal
Chairman