



AMERICAN BENEFITS COUNCIL

July 20, 2020

Submitted electronically regulations.gov

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

RE: Z-RIN 1210–ZA28: Prohibited Transactions involving Pooled Employer Plans under the SECURE Act and Other Multiple Employer Plans

Dear Sir or Madam:

On behalf of the American Benefits Council, we are submitting this comment with respect to the above-referenced Request for Information (“RFI”) issued by the Department of Labor (the “Department”) regarding prohibited transactions involving (1) the pooled employer plans (“PEPs”) and (2) other multiple employer plans (“MEPs”). Our comment relates to PEPs, other MEPs, and single-employer plans. (As in the RFI, we refer in this letter to “MEPs” as multiple employer plans that are not PEPs.) As this process moves forward, we may provide comments on specific proposals arising out of the RFI.

PTE 77-4

We believe that a change to an existing prohibited transaction exemption would help with respect to the formation of PEPs and is also more broadly needed outside the PEP area. Very generally, Prohibited Transaction Exemption 77-4 applies to the purchase or sale by an employee benefit plan of shares of an open-end investment company registered under the Investment Company Act of 1940, the investment adviser for which is also a fiduciary with respect to the plan (or an affiliate of such fiduciary). We ask that the Exemption be modified to permit negative consent to changes in the investment advisory and other fees charged to or paid by the plan and the investment

company. Under the Exemption, an independent fiduciary must be notified of any change in any of the fees referred to above and must approve in writing the continuation of such purchases or sales and the continued holding of any investment company shares acquired by the plan, prior to such change and still held by the plan. The requirement of an express written approval is burdensome and unnecessary and DOL has allowed negative consent in numerous private exemptions modeled on PTE 77-4. If the independent fiduciary is notified of any such changes and takes no adverse action, the approval requirement should be treated as satisfied.

DIFFERENCES BETWEEN PEPs AND MEPs; THE NEED TO LET THE MARKETS EVOLVE BEFORE IMPOSING ADDITIONAL BURDENS

The RFI relates to both PEPs and MEPs, but it is important to recognize that PEPs and MEPs are distinct entities. Congress permitted PEPs with the intent of allowing *unrelated* employers to participate in a single retirement plan and effectively delegate certain plan-related responsibilities to a service provider. MEPs, on the other hand, are generally sponsored and administered by associations and other organizations that have a close relationship with participating employers apart from the plan. That means the association, as the MEP sponsor, is uniquely accountable to participating employers in ways separate from the plan. As the Department considers what guidance is necessary to implement congressional intent with respect to PEPs and MEPs, we urge DOL to take this distinction into account.

Moreover, as we have previously discussed with DOL, we generally urge DOL to let the markets evolve before deciding whether to impose any burdens not compelled by the statute. The key advantages of PEPs and MEPs are their cost savings; additional burdens could easily erode those advantages, thus undermining the goal of the SECURE Act.

We thank you for considering our request.

Sincerely,

A handwritten signature in black ink, appearing to read "Jan Jacobson", with a long horizontal flourish extending to the right.

Jan Jacobson
Senior Counsel, Retirement Policy