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July 20, 2020

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

**Re: Prohibited Transactions involving Pooled Employer Plans under the SECURE Act and
Other Multiple Employer Plans – Request for Information
Z-RIN 1210-ZA28**

To Whom it May Concern:

On behalf of our members, the Insured Retirement Institute (“IRI”) appreciates the opportunity to provide these comments to the Department of Labor (the “Department”) in response to its request for information (“RFI”) regarding Pooled Employer Plans (“PEPs”) and other Multiple Employer Plans (“MEPs”).¹ The RFI poses a number of important questions intended to assist the Department in assessing “whether to propose a class exemption on its own motion to cover prohibited transactions involving PEPs and MEPs.” We believe the Department should develop a class exemption to provide a clear roadmap for entities to begin offering PEPs, thereby making retirement savings vehicles available to significantly more American workers. Our views on the questions posed in the RFI are set forth in greater detail below.

The Insured Retirement Institute (IRI) is the leading association for the entire supply chain of insured retirement strategies, including life insurers, asset managers, and distributors such as broker-dealers, banks, and marketing organizations. IRI members account for 90 percent of annuity assets in the U.S., include the top 10 distributors of annuities ranked by assets under management, and are represented by financial professionals serving millions of Americans. IRI champions retirement security for all

¹ 85 FR 36880 (June 18, 2020).

through leadership in advocacy, awareness, research, and the advancement of digital solutions within a collaborative industry community.

Many IRI members are also members of other financial services trade associations, including the American Council of Life Insurers (“ACLI”), the Investment Company Institute (“ICI”), and the Securities Industry and Financial Markets Association (“SIFMA”). We understand that these organizations are or will also be submitting comment letters to the Department in response to the RFI, and we generally support the views and positions being expressed in those letters.

As you know, the Setting Every Community Up for Retirement Enhancement Act of 2019 (the “SECURE Act” or the “Act”) amended the Employee Retirement Income Security Act of 1974 (“ERISA”) to allow for the establishment of PEPs. The SECURE Act also added a new subsection to Section 413 of the Internal Revenue Code (the “Code”) to address the qualification requirements for plans with pooled plan providers (“PPPs”).

By authorizing the establishment of PEPs, the SECURE Act will greatly increase access to retirement plans for hard-working Americans. As we wrote to the Department in 2018² and 2019,³ MEPs enable small businesses to participate in professionally administered plans through which they can benefit from economies of scale with limited fiduciary responsibilities. As a result, employees of these organizations have access to the same retirement savings opportunities already enjoyed by employees of large companies on a near universal basis through 401(k)s and similar defined contribution plans. Similarly, PEPs will enable multiple unrelated employers to more effectively compete for talent with larger employers who can more easily assume the costs and responsibilities associated with sponsoring retirement plans.

IRI and its members respectfully offer the following comments in support of DOL rulemaking to provide a prohibited transaction exemption with respect to PEPs:⁴

I. Pooled Plan Providers

In contrast to the Department’s decision to impose limits on the types of entities that can offer Association Retirement Plans,⁵ Congress opted to allow any type of entity to serve as a PPP as long as it was willing to meet the specified requirements, including serving as a fiduciary, registering with the DOL and Treasury and agreeing to additional oversight, fulfilling specific plan responsibilities, and providing additional disclosures. We believe this reflected an intention on the part of Congress to allow a wide

² Comment letter from IRI regarding the Department’s Proposed Rule on the “Definition of ‘Employer’ Under Section 3(5) of ERISA – Association Retirement Plans and Other Multiple-Employer Plans” (RIN 1210-AB88) (December 21, 2018).

³ Comment letter from the Insured Retirement Institute in response to the Department’s Request for Information on “‘Open MEPs’ and Other Issues Under Section 3(5) of ERISA” (RIN 1210-AB92) (October 29, 2019).

⁴ We note, however, that our member companies are still evaluating the potential to rely on existing prohibited transaction class exemptions in order to offer PEPs, and some of our members may ultimately choose to rely on one or more existing exemptions rather than any new exemption that may be developed by the Department based on the input it receives from the public in response to the RFI.

⁵ See Definition of “Employer” Under Section 3(5) of ERISA-Association Retirement Plans and Other Multiple-Employer Plans, 84 FR 37508 (July 31, 2019).

range of entities to potentially enter this space so that a robust and competitive marketplace for PEPs will develop to effectively expand plan coverage, and we commend Congress for providing this flexibility in the Act. This flexibility will allow banks, insurance companies, broker-dealer and asset management firms, and similar financial services firms to offer high quality, low cost PEPs to serve the vast number of small employers that do not currently offer retirement plans for their employees., and the flexibility provided by Congress will facilitate this.

Financial services firms that offer PEPs and act as PPPs would provide significant benefits employers and their employees. By their nature, financial services firms, particularly those that currently provide retirement plan services, will bring direct expertise in financial matters to the PPP role. Moreover, many employers already have existing relationships with financial services firms, thereby providing an existing pathway for information to flow to small businesses and their employees about opportunities to join PEPs. As the Department knows all too well, one of the most significant barriers to increasing retirement savings in this country is a lack of knowledge about the importance of retirement planning and about opportunities to build an adequate nest egg. Financial institutions are well-positioned to leverage their existing relationships to improve financial literacy and encourage more Americans to save for retirement.

All PPPs should be subject to the same fiduciary obligations and assume the same administrative responsibilities, regardless of the type of entity or business model. This would ensure that employers and their employees would face no greater risk or burdens if they choose to participate in a PEP sponsored by an insurance company as compared to a PEP sponsored by another type of entity. As a fiduciary, the PPP would be subject to the prohibited transaction rules and all of ERISA's other consumer protections. We believe a competitive marketplace is the most effective and efficient deterrent to unqualified entities entering the PEP space. In our view, imposing stringent conditions or limitations would effectively equate to the Department picking winners and losers.

IRI Recommendation: *The Department should avoid imposing extensive conditions or limitations on the types of entities that can sponsor a PEP.*

We note that the RFI seeks information about the types of business models that could be employed to offer PEPs, as well as the types of conflicts of interest that could arise from various business models. We believe these inquiries are premature. The SECURE Act requires significant rulemaking and guidance with respect to PEPs, both from the Department on ERISA matters and from the Treasury Department matters related to the Code. This rulemaking and guidance will play a critical role in the evaluation of various business models for the offering of PEPs. Until these regulatory actions are completed, we are simply unable to offer any insights into potential business models and related conflicts.

IRI Recommendation: *The Department (and the Treasury Department) should move expeditiously to develop and adopt the required rules and guidance. We would be happy to revisit the Department's inquiries following the completion of those steps.*

We appreciate the Department's interest in obtaining information about potential business models and related conflicts, but we do not believe this information is necessary for the Department to develop

prohibited transaction relief for PEPs. As noted above, Congress intentionally established a flexible structure for PEPs, and we believe the Department should develop a similarly flexible class exemption.

Obviously, appropriate safeguards will be needed to ensure that PPPs effectively manage the conflicts of interest that could arise if, for example, a PPP offers to sell its own proprietary products or services to participating employers or their workers. A prohibited transaction exemption subject to reasonable conditions would be needed under such circumstances. Requiring oversight of proprietary offerings by an independent plan fiduciary would be one potentially workable approach, though we do believe other approaches could also be viable.

IRI Recommendation: *The Department should establish a flexible prohibited transaction class exemption with appropriate conditions designed to protect participants against the potential harm that could result from various conflicts of interest without impairing the ability of financial services firms acting as PPPs to offer products or services that could be beneficial to participants.*

II. Plan Investments

The RFI also seeks information about the types of investments that could be offered through PEPs. However, as with the Department's inquiries regarding business models and conflicts, we believe it is premature to speculate about investment options that could be offered to PEP participants until greater clarity is provided through the rulemaking and guidance to be developed by the Department (and the Treasury Department) under the SECURE Act.

We note, however, that proprietary investments are one of many wholly appropriate ways in which service providers can receive reasonable compensation for the services they provide to retirement plans. Such restrictions would discourage many financial services firms from entering the market as PPPs, which would reduce competition, potentially increase costs to plans and participants, and ultimately undercut Congress's intent to use PEPs to expand retirement coverage.

IRI Recommendation: *The Department should carefully structure its rules and guidance to avoid placing undue restrictions on the ability to use proprietary products in PEPs.*

III. Employers

Lastly, the RFI includes several questions about employers who might seek to join a PEP. This too is fairly speculative, but IRI and our members believe that PEPs will be of greatest interest and appeal to small and mid-size employers that do not currently offer any sort of employment-based retirement savings plan. We do not currently anticipate any significant migration of employers from existing single-employer plans to PEPs. Employers that already provide a retirement plan for their employees would find far less benefit from joining other employers in a PEP. While a PEP would provide relief from administrative burdens and fiduciary obligations, employers in a PEP will have far less control over the plan structure and investment options. Moreover, moving to a PEP could result in far fewer investment options being made available to participants, which could adversely impact hiring and employee retention efforts.

IV. Conclusion

A cost-effective, easy-to-use workplace retirement savings program is an important tool for building retirement security. Reducing the number of workers without access to a workplace plan should be a top priority for the Department. A flexible new class exemption would encourage a wide variety of entities, including financial services firms, to begin offering PEPs in order to meet the needs and concerns of small employers. This, in turn, would help to close the retirement coverage gap and improve the retirement outlook for millions of working Americans. As such, we respectfully urge the Department to undertake this regulatory project and to promptly complete the steps called for by the SECURE Act, and IRI and our members stand ready to work with the Department to provide research, information and additional comments to improve retirement security for all Americans.

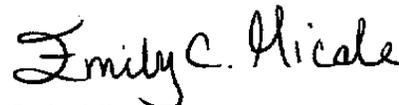
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Thank you again for the opportunity to provide these comments. If you have questions about our views on the questions posed in the RFI, or if we can be of any further assistance in connection with this important regulatory effort, please feel free to contact the undersigned at jberkowitz@irionline.org or emicale@irionline.org.

Sincerely,



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