



July 20, 2020

Submitted electronically via email to: e-OED@dol.gov

Ms. Jeanne Wilson, Acting Assistant Secretary
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Re: Z-RIN 1210-ZA28, Prohibited Transactions Involving Pooled Employer Plans Under the SECURE Act and Other Multiple Employer Plans – Request for Information

Dear Acting Assistant Secretary Wilson:

Aon is a global professional services firm providing a broad range of risk, retirement, and health solutions that support our clients throughout the 120 countries in which we conduct business today. The firm has significant expertise regarding a wide range of employee benefits-related matters including pension and retirement plans, administration, health insurance plans, and platforms, defined contribution plan consulting, investment management, and other services supporting its clients.

Aon very much appreciates the U.S. Department of Labor (“DOL”) and Employee Benefits Security Administration’s (“EBSA”) efforts to implement the Pooled Employer Plan (“PEP”) provisions enacted as part of the Setting Every Community Up for Retirement Enhancement Act (“SECURE Act”). PEPs provide an opening to bring new employers and savers into retirement plans, increasing the opportunity for American workers to achieve retirement readiness with greater access to qualified, employer-sponsored retirement plans and more awareness of the importance of saving and access to the tools available to do so.

We believe the Aon PEP model, utilizing its full range of capabilities, expertise, and services, will result in employers and participants quickly realizing the benefits PEPs were designed to deliver. Those benefits include broader plan coverage, better economies of scale and therefore retirement outcomes, and continued innovation in employer-sponsored retirement plans.

The Aon PEP is designed to be a bundled solution for participating employers, utilizing the expertise of both affiliated and non-affiliated service providers of Aon. Specifically, Aon Consulting, Inc. (“ACI”) will serve as the Pooled Plan Provider (“PPP”) to the Aon PEP. In this capacity, ACI will assume full fiduciary responsibility of the Aon PEP as both the fiduciary plan administrator under Section 3(16) of the Employee Retirement Income Security Act of 1974 (“ERISA”) and as named fiduciary as designated under Section 402 of ERISA. As plan administrator, ACI has partnered with Voya Institutional Plan Services, LLC (“Voya”) to perform the daily operational functions required of the Aon PEP. ACI will retain all oversight and fiduciary responsibility for the operational and administrative aspects. Voya, through its affiliate Voya Institutional Trust Company, will also serve as the Aon PEP trustee for holding



plan assets and implementing directed transactions. ACI, in its capacity as the PPP to the Aon PEP, has established a formal fiduciary governance structure to monitor Voya and make all required fiduciary determinations over plan operations. ACI's oversight of Voya, as well as all other service providers to the Aon PEP, is memorialized in a formal PPP charter describing ACI's fiduciary responsibilities and authority to fulfill its obligations as the PPP.

As the Aon PEP's named fiduciary, ACI will appoint its affiliate, Aon Investments USA Inc. ("Aon Investments"), as the fiduciary investment manager of the plan under Section 3(38) of ERISA. Aon Investments is a registered investment adviser under the Investment Advisers Act of 1940. Aon Investments also meets the conditions to serve as a Qualified Professional Asset Manager ("QPAM") under ERISA Prohibited Transaction Exemption 84-14. Accordingly, Aon Investments, in fulfilling its fiduciary obligations, adheres to both ERISA's fiduciary standards, as well as the SEC's compliance program requirement under Rule 206(4)-7 of the Investment Adviser's Act of 1940. The expenses associated with Aon Investment's services will be based on assets under management. This fee will be disclosed to and authorized by each participating employer in the Aon PEP.

Pursuant to its appointment as the Aon PEP's investment manager, Aon Investments intends to provide available investment options under the plan including third party mutual funds, third party collective investment funds, and affiliated collective investment funds managed by Aon Investments, and trustee by its affiliate, Aon Trust Company LLC ("ATC"), an Illinois chartered bank. ATC's collective investment trust qualifies as a tax-exempt group trust under Revenue Ruling 81-100 and is a collective trust fund excepted from the registration requirements of an investment company under Section 3(c)(11) of the Investment Company Act of 1940 and of a bank under Section 3(a)(2) of the Securities Act of 1933, as amended. Aon Investments will have the authority to pay from Aon PEP plan assets reasonable compensation to third party investment managers who will manage to the investment strategy under the delegated mandate of Aon Investments. Aon Investments will not receive any indirect compensation in connection with its services and will not be party to any revenue sharing arrangements related to the selection of third party funds available for investment under the Aon PEP. To the extent that plan assets are invested in ATC's collective investment funds, there will be a trustee fee for administrative expenses. The ATC trustee fee, pursuant to the statutory exemption under Section 408(b)(8) of ERISA, will also be disclosed to and authorized by each participating employer in its capacity as the responsible plan fiduciary independent of the fiduciary authority of ACI, Aon Investments, and ATC. Although Aon Investments will have discretion to invest plan assets in ATC collective investment funds, it will not authorize the payment of the associated administrative fee of its affiliate.

ACI will retain oversight as named fiduciary to the Aon PEP and monitor Aon Investments on an ongoing basis pursuant to the powers and duties articulated in its fiduciary charter as part of established governance protocols.

As described above, there is one fee, with distinct components for administrative and investment support, for the Aon PEP solution. This fee will be authorized by each participating employer in its capacity as plan sponsor and fiduciary, as defined under the SECURE Act.

Below, please find Aon's comments in response to DOL/EBSA's Request for Information ("RFI"), which focus on those questions to which Aon – which intends to offer a PEP – is best suited to reply and provide information that we hope will be helpful as you draft appropriate rules to carry out the SECURE Act's PEP provisions and bring this important retirement savings concept to market.

A. Pooled Plan Providers and MEP Sponsors

2. What business models will pooled plan providers adopt in making a PEP available to employers? For example, will pooled plan providers rely on affiliates as service providers, and will they offer proprietary investment products?

The Aon PEP will be established to be compliant under ERISA and existing DOL guidance. Specifically, ACI will serve as the PPP of the Aon PEP and assume the duties of the ERISA Section 3(16) Plan Administrator and named fiduciary under the plan instrument. Pursuant to its duties as plan administrator, ACI has partnered with the record keeper Voya . In its capacity as Named Fiduciary, ACI has appointed its affiliate, Aon Investments, to serve as the PEP's ERISA Section 3(38) fiduciary investment manager. Concurrent with the acknowledgement of its appointment, Aon Investments will receive no additional compensation pursuant to ACI's fiduciary authority. In other words, ACI will not authorize the use of PEP plan assets to compensate Aon Investments (or any other Aon affiliate).

Aon Investments may utilize affiliated investment products in the form of its collective investment funds trustee by Aon affiliate ATC. The precise scope of Aon Investments fiduciary authority as investment manager will be clearly defined in the investment management agreement between Aon Investments and ACI pursuant to the latter's power of appointment as named fiduciary. ACI will retain its fiduciary duty to monitor Aon Investments.

All services and associated fees will be authorized by each participating employer in its own fiduciary capacity independent of all Aon affiliates. Compensation received by the PPP for Aon PEP services include an administration fee, an investment management fee, and a trustee fee. As the PPP, ACI will not authorize the payment of any fees from plan assets to itself or any of its affiliates.

- 3. What conflicts of interest, if any, would a pooled plan provider (along with its affiliates and related parties) likely have with respect to the PEP and its participants? Are there conflicts that some entities might have that others will not?**

As noted above, the Aon PEP is designed to prevent non-exempt, conflict of interest prohibited transactions under ERISA. As the PPP, ACI, consistent with ERISA's fiduciary provisions, will not use PEP assets in any way to increase the compensation of ACI or any Aon affiliate or otherwise derive an economic benefit from its fiduciary authority.

- 4. To what extent will a pooled plan provider be able to unilaterally affect its own compensation or the compensation of its affiliates or related parties through its actions establishing a PEP or acting as a fiduciary or service provider to the PEP? What categories of fees and compensation, direct or indirect, will pooled plan providers and their affiliates and related parties be likely to receive as a result of operating a PEP, including through the offering of proprietary investment products? Are there likely to be any differences in types of fees and compensation associated with operation of a PEP as compared to a single employer plan?**

As noted above, all fees relating to the PEP will be authorized by each participating employer in its capacity as the responsible plan fiduciary selecting ACI as the PPP. As structured, the Aon PEP will not permit ACI, as the PPP, to affect its compensation or the compensation of its affiliates following its selection by each participating employer through initial or renewal contracts.

- 5. Do respondents anticipate that the Department's existing prohibited transaction exemptions will be relied on by pooled plan providers, and if so, which exemptions are most relevant? Are any amendments needed to the Department's existing exemptions to address unique issues with respect to PEPs? Do respondents believe that there is a need for additional prohibited transaction exemptions? If so, please describe the specific transactions and the prohibited transactions provisions that would be violated in connection with the transactions.**

Aon will rely on existing statutory and class exemptions under ERISA. Specifically:

- ERISA Section 408(b)(2)

ACI intends to authorize payment to unaffiliated service providers for reasonable services necessary for the operation of the PEP provided that such payments are reasonable compensation.

- ERISA Section 408(b)(8)

To the extent that ATC's collective investment funds comprise, in full or in part, the investment options of the Aon PEP, the administrative fee for services of ATC as trustee of those funds will be authorized by the participating employer in its capacity as responsible plan fiduciary independent of all Aon affiliates.

- PTE 84-14

As a qualified professional asset manager ("QPAM"), Aon Investments ensures that it meets all conditions of the status based QPAM exemption under ERISA.

- 7. To the extent respondents do not believe additional prohibited transaction relief is necessary, why? How would the conflicts of interest be appropriately addressed to avoid prohibited transactions? Are different mitigating provisions appropriate for different entities? Why or why not?**

Consistent with the PEP's design, as described above, Aon does not believe additional prohibited transaction relief is necessary for its PEP. The PEP's organization and design does not permit ACI or any Aon affiliate to engage in non-exempt prohibited transactions under ERISA. All fees received by ACI and its affiliates are authorized in advance by each participating employer of the PEP.

Nevertheless, Aon is of the belief that updates to existing prohibited transaction exemptions, or parallel exemptions, to address both the new PEP landscape as well as the evolution of the broader employee benefits industry will benefit participants and beneficiaries of the PEP as well as adopting employers. An example may include analogous relief for the use of collective investment funds, similar to the existing exemption for proprietary, open end mutual funds under PTE 77-4.

B. Plan Investments for PEPs and MEPs

- 1. What plan investment options do respondents anticipate will be offered in PEPs and MEPs? Are the investment options likely to be as varied as those offered by large single employer plans? Are the options likely to be more varied than those offered by small single employer plans?**



The Aon PEP investment lineup will consist of third party mutual funds, third party collective investment funds, and Aon affiliated collective investment funds available to participants.

- 2. What role will the entities serving as pooled plan providers or MEP sponsors, or their affiliates or related entities, serve with respect to the investment options offered in PEPs and MEPs?**

As described above, Aon Investments will serve as the PEP's fiduciary investment manager. To the extent that assets are invested in affiliated collective investment funds, ATC will serve as trustee to such funds.

C. Employers in the PEP or MEP

- 2. Will larger employers also seek to join PEPs or MEPs in order to take advantage of additional economies of scale? Will any additional prohibited transactions exist as a result of substantial size differences between employers in the PEP or MEP (e.g., because a large employer has greater ability to influence decisions of a pooled plan provider or MEP sponsor as compared to a small employer)?**

Aon believes that fees and expenses associated with its PEP should generally be applied on a uniform basis that will treat similarly situated employers substantially the same. The Aon PEP is designed to serve all size clients and the selection of our recordkeeper and plan design affords all adopting employers to experience enhanced economies of scale and access to certain features not generally available in certain market segments. Compensation received by the PPP and its affiliates with respect to each separate employer portion under the PEP would take into account various components, including the total value of assets, number of employees and former employees participating in the PEP, and the number and type of plan options selected by the participating employer.

A description of services and corresponding compensation received by the PPP will be fully disclosed, pursuant to the applicable rules relating to covered service providers under ERISA, such that each employer will be in position to independently evaluate the reasonableness of the PEP's fees and authorize the associated payment of those fees.

- 3. Will the existence of multiple employers in a PEP or MEP cause greater exposure to prohibited transactions in connection with investments in employer securities or employer real property? In what form will PEPs and MEPs hold employer securities or employer real property?**

Aon believes that investments in employer securities, under the PEP, will present a potential risk to the PPP in its role as a fiduciary to the extent that the PPP is responsible for the determination of such investments initially or as an ongoing investment option are prudent. We believe DOL guidance will be helpful to confirm that the fiduciary responsibility for a participating employer's selection of any investment option which the PEP is agreeable to making available to such employer's employees – if requested by such employer – rests with that employer, particularly if such investment option is limited solely to the employees of such employer (e.g., an employer stock fund for a particular employer or self-directed brokerage account).

- 4. Do respondents anticipate that prohibited transactions will occur in connection with a decision to move assets from a PEP or MEP to another plan or IRA, in the case of a noncompliant employer? Do respondents anticipate that any other prohibited transactions will occur in connection with the execution of that decision?**

Section 101 of the SECURE Act provides that an employer's participation in the PEP will end, and its portion of the PEP must be transferred to another plan or an IRA, if the employer fails to comply with SECURE Act requirements. However, DOL may waive certain requirements in appropriate circumstances if the Secretary determines it is in the best interests of the employees of the noncompliant employer to retain the assets in the PEP with respect to which the employer's failure occurred.

Aon believes the PEP market will benefit to the extent that there is fiduciary guidance with respect to any fiduciary obligations involving the transfer of assets from the PEP to another qualified plan or to an IRA, including the identification of the plan or IRA, any related IRA fees, any fees charged by the PPP for such transfer, and related services (e.g., data transfer, trustee fees, etc.). DOL guidance on this issue could establish rules similar to those that apply for automatic rollovers to individual retirement plans or distributions from terminated individual account plans.

It may be in the best interest of participants in certain cases for a PEP to retain the assets of a noncompliant employer's portion of the PEP, rather than transferring those assets to another plan or an IRA. For example, the employer may have another qualified plan and not wish to establish a new account and transferring assets to an IRA would mean such participants would no longer be able to invest in options offered by the PEP. DOL guidance would be helpful in establishing the criteria to be used by the PPP when determining whether to transfer assets to



another plan or IRA, or retain assets in the PEP, for noncompliant participating employers. Such guidance should address the fees that the PPP may charge for any such transfer and the ongoing fees that the PPP may charge participants in such portion if the PEP retains the assets of the noncompliant employer plan.

There are various other issues that such guidance also should consider relating to noncompliant employers where the PEP retains assets, such as whether the PPP may make settlor-like decisions regarding any retained participants after a determination of noncompliance and how the PPP may be compensated for any services it provides for such retained participants (without violating any prohibited transaction rules) if the employer is unwilling or unable to pay the PPP's fees for its services after such determination. Such rules may be similar to those existing DOL rules that apply to a qualified termination administrator for abandoned individual account plans, but without requiring a distribution of assets by the PEP.

As noted above, we trust our responses to the RFI will be helpful as DOL seeks to implement the SECURE Act's PEPs provisions. Aon requests that the DOL confirm the Aon PEP structure is compliant under existing guidance or, in the alternative, issue direction as necessary so that Aon may provide the advantages inherent in its Aon PEP model to participants and beneficiaries. We very much appreciate DOL's willingness to consider our comments – including Aon's underlying belief that an expansive interpretation will produce the best and most protected outcomes for PEP participants.

Please know that Aon stands ready and willing to continue serving as a resource however possible as DOL works through how best to structure PEP guidance to support the development of these new and improved plans contemplated by the SECURE Act.

Sincerely,

A handwritten signature in black ink that reads "Richard E. Jones". The signature is written in a cursive style with a large, sweeping initial "R".

Richard E. Jones, senior Partner, National Retirement Practices | Aon

A handwritten signature in blue ink that reads "Ted Novy". The signature is written in a cursive style with a large, sweeping initial "T".

Ted Novy, Vice President & General Counsel | Aon Service Corporation

