October 1, 2020

Submitted via www.regulations.gov

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20210
Attention: Proposed Registration Requirements for
Pooled Plan Providers RIN 1210-AB94

Re: Proposed Registration Requirements for Pooled Plan Providers (RIN 1210–AB94)

To whom it may concern:

We appreciate the opportunity to provide our comments on the proposed rule that would establish the requirements for registering as a "pooled plan provider" (PPP) for "pooled employer plans" (PEP) under sections 3(43) and 3(44) of the Employee Retirement Income Security Act (ERISA).

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We provide comments on several of the proposed reporting requirements below.

1. The proposal defines "beginning operations as a pooled plan provider," which determines whether initial registration is required, to mean "publicly marketing services as a pooled plan provider or publicly offering a pooled employer plan." We do not believe the definition should include "publicly marketing services as a pooled plan provider." Marketing and solicitation efforts by a prospective pooled plan provider may occur before a pooled employer plan has been established. For example, a prospective pooled plan provider may discuss its intention to establish a pooled employer plan with potential participating employers to gauge demand or for other reasons. Such activity should not trigger a requirement to register. If the DOL includes "publicly marketing services as a pooled plan provider" in the definition, it should be narrowed (or clarified) to mean publicly marketing services with respect to a specific pooled employer plan that has been formally adopted, even if not yet effective.

2. The DOL should clarify that **Item (viii) of the Initial filing** – which requires "a description of the administrative, investment, and fiduciary services that will be offered or provided in connection with the pooled employer plans, including a description of the role of any affiliates in such services" – applies only with respect to the PPP and its affiliates. In the preamble to the proposed rule, the DOL explained that the required disclosure is "a description of administrative and investment services that will be offered or provided by the pooled plan provider, including the identification of any affiliates expected to have a role in the provision of those administrative and investment services..." This is consistent with the DOL's stated rationale (i.e., to "assist the Department and prospective participating employers evaluate the pooled plan provider and whether there are potentials for conflicts of interest with respect to the operations or investments of any pooled employer plans to be operated by the provider"). However, in item (viii) of the proposed rule, the DOL refers to "administrative, investment, and fiduciary services that will be offered or provided in connection with the pooled employer plans" without explicitly limiting this

language to services that will be provided by the PPP and its affiliates. The DOL should clarify that the disclosure required by item (viii) is limited to the services that the PPP and its affiliates will provide in connection with the PEP as the DOL explained in the preamble to the proposed rule.

3. Several of the registration rules could be read to potentially apply with respect to every employee of the PPP. In particular,

   - **Item (ix) of the Initial filing** requires disclosure of "any federal or state criminal conviction related to the provision of services to, operation of, or investments of, any employee benefit plan, against the pooled plan provider, or any officer, director, or employee of the pooled plan provider…"
   - **Item (x) of the Initial filing** requires disclosure of "any ongoing criminal, civil, or administrative proceedings related to the provisions of services to, operation of, or investments of any employee benefit plan, in any court or administrative tribunal by the federal or state government or other regulatory authority against the pooled plan provider, or any officer, director, or employee of the pooled plan provider."
   - **Item (iii) of the reportable event rules** requires supplemental disclosure upon "receipt of written notice of the initiation of any administrative or enforcement action related to the provision of services to, operation of, or investments of any pooled employer plan or other employee benefit plan, in any court or administrative tribunal by any federal or state governmental agency or other regulatory authority against the pooled plan provider or any officer, director, or employee of the pooled plan provider."
   - **Item (iv) of the reportable event rules** requires supplemental disclosure upon "receipt of written notice of a finding of fraud or dishonesty by a federal or state court or federal or state governmental agency related to the provision of services to, operation of, or investments of any pooled employer plan or other employee benefit plan against the pooled plan provider or any officer, director, or employee of the pooled plan provider."
   - **Item (v) of the reportable event rules** requires supplemental disclosure upon "receipt of written notice of the filing of any federal or state criminal charges related to the provision of services to, operation of, or investments of any pooled employer plan or other employee benefit plan against the pooled plan provider or any officer, director, or employee of the pooled plan provider."

   Although these rules are limited to reportable events "related to" the provision of services to, operation of, or investments of, a PEP or other employee benefit plan, it would be impractical to require a large, multi-national corporation such as WTW to gather information necessary to comply with this rule for all of its employees around the globe. The DOL should limit the scope of these rules so that they do not apply with respect to employees of the PPP who do not provide any services to the PEP. As the DOL noted in the preamble to the proposed rule, ERISA section 411 already contains a detailed disqualification rule that would protect plans and their participants from persons convicted of criminal activity. Information regarding PPP employees who do not provide any services to the PEP is not necessary for the DOL and IRS to satisfy their oversight role of PPPs or for prospective participating employers to evaluate the PPP.

4. The proposal requires supplemental reporting within 30 days of "any significant change in corporate or business structure of the pooled plan provider, e.g., merger, acquisition, or initiation of bankruptcy, receivership, or other insolvency proceeding for the pooled plan provider or an affiliate, or ceasing all operations as a pooled plan provider."

   With the exception of the requirement to report "ceasing all operations as a pooled plan provider," the DOL should exempt a PPP that is a publicly traded company or a subsidiary of a publicly traded company from this requirement. Publicly traded companies are already required to file a report with the SEC on Form 8-K within 4 business days of significant events that generally would include a merger, acquisition, or initiation of bankruptcy or receivership.

   Further, DOL should confirm that supplemental reporting with respect to a merger or acquisition (M&A) relates only to M&A activity of the PPP, not any of its affiliates. This is reflected in the draft Form PR

instructions for line 8a and 8b – which require disclosure of "a material change in the information regarding the pooled plan provider" – but is not clear in the proposed rule. The DOL should clarify that the reference to "pooled plan provider or an affiliate" in the proposed rule relates solely to bankruptcy, receivership, or other insolvency proceeding (as provided in draft Form PR instructions for line 8c). If the DOL intended to require disclosure of M&A activity for affiliates of the PPP, the DOL should either (a) limit the scope of this reportable event so that it does not apply with respect to affiliates of the PPP that provide no services to the PEP or (b) clarify that changes with respect to such entities are not "significant." A large, multi-national corporation such as WTW frequently engages in corporate transactions with respect to various parts of its businesses in various geographies. It would be unduly burdensome to require disclosure of all such activity and/or to require a review of changes to affiliates that are uninvolved in PEP operations for significance.

Conclusion

We appreciate your consideration of these comments. Please contact any of the undersigned if you have any questions or would like to discuss our comments in more detail.

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