



Terrance P. Power, CFP, QPA, ERPA, CRPS  
President. The Platinum 401k, Inc.  
2451 N. McMullen Booth Road, Suite 200  
Clearwater, FL 33759  
813.774.3366  
tpower@ThePlatinum401k.com

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*Submitted via email to e-OED@dol.gov*

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

Re: Comments on Prohibited Transactions involving Pooled Employer Plans Under the  
SECURE Act and Other Multiple Employer Plans - Z-RIN 1210-ZA28

To Whom it May Concern:

Thank you for the opportunity to provide input on your ***Request For Information Document Number 2020-13142 - Prohibited Transactions involving Pooled Employer Plans Under the SECURE Act and Other Multiple Employer Plans.***

Our organization, The Platinum 401k, Inc. and our affiliates American Pension Services, LLC and Plan Compliance Services, Inc. are fee-based service providers who have worked with numerous 413(c) Multiple Employer Plans for over two decades.

The Platinum 401k, Inc. is the marketing arm of one of the retirement plan industry's most successful "open multiple employer plan" programs. American Pension Services, LLC is an independent fee-for-service third party administrator that specializes in retirement plan administration and compliance testing of multiple employer plans for PEO's, Associations, and open multiple employer plans across the country in conjunction with a variety of well established industry leading recordkeepers. Plan Compliance Services, Inc, founded in 2001, is our 3(16) Plan Administrator firm and has been serving in that capacity for multiple employer plans since 2011.

We commend the Department for reaching out to the retirement plan industry for comments on this important issue. A secure retirement for America's workers is not only in the best interests of the workers themselves, but also for employers and our nation as a whole. Pooled Employer Plans are an important step forward for all parties in broadening retirement plan coverage in the workplace.

Our comments will be focused primarily on questions in the *Request For Information* pertaining to the role of the 3(16) Plan Administrator/Pooled Plan Provider under the provisions of the SECURE Act.

### **Question A (1) – What types of entities are likely to act as pooled plan providers?**

Our numerous discussions with recordkeepers, Associations, and advisors across the country has established a nearly uniform reluctance among these types of service providers to assume the role of a Pooled Plan Provider. The common theme appears to be one of lack of expertise as well as concern about the potential liability.

In our opinion, the most likely entities to assume this role would be firms that currently serve in a 3(16) Plan Administrator capacity for either single employer plans or multiple employer plans, or independent employee benefit consultants who will either develop or acquire the expertise to perform these services.

In some instances, there are individuals or firms with substantial levels of experience in this area. Many of these firms, like ourselves, also serve as third party administrators to retirement plans in conjunction with their 3(16) duties.

Broker-dealers continue to struggle with the issue of “control of the plan” (by serving as the Pooled Plan Provider) versus the liability associated with their serving in that role. There is no clear direction being given on this important sector of the market at this time.

In terms of the number of entities who are likely to act as a Pooled Plan Provider, it appears from the discussions that we’ve had that there will be a small number of PPPs when the first Pooled Employer Plans roll out on January 1, 2021. That number will likely increase once the final registration criteria has been established by the Department of Labor.

One of the concerns of this writer is that the DOL will establish requirements for acting as a Pooled Plan Provider will be overly restrictive. That would be unfortunate in that it could cast a chilling effect on the new legislation and run contrary to the stated goals of increasing retirement plan coverage for America’s workers.

It is likely that a single Pooled Plan Provider will establish multiple PEPs with different features and different recordkeepers.

### **Question A (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 the conflicts that some entities might have that others will not?**

The “elephant in the room” with regards to Pooled Plan Providers is the need to minimize the risk of having bad actors involved in the oversight and ongoing operation of Pooled Employer Plans. It is for this reason that I would propose the following requirements on a Pooled Plan Provider in addition to the review/audit requirements already outlined in the enacted legislation to further protect plan participants:

1. All Pooled Employer Plans should include a properly licensed and registered 3(38) Investment Manager engaged at the plan level to establish the Plan’s Investment Policy Statement, select and monitor investment fund options, and coordinate all

investment fund changes. The 3(38) Investment Manager shall be engaged by the Pooled Plan Provider. Their compensation details should be fully disclosed to all adopting employer of the Pooled Employer Plan.

2. The Pooled Plan Provider or any related entity shall not also serve as the 3(38) Investment Manager on any Pooled Employer Plan which they are engaged as the Pooled Plan Provider or 3(16) Plan Administrator. This restriction would provide an independent "second set of eyes" to oversee the plan assets while eliminating many potential conflicts of interest.

It is unlikely that a Pooled Plan Provider who engages their own affiliate or subsidiary as the 3(38) Investment Manager would ever find reason to terminate them from the Pooled Employer Plan. For this important reason, these roles should be filled by separate parties.

Additionally, it should help to eliminate inappropriate proprietary fund selections that may not be in the participant's best interests.

I cannot stress enough how important this restriction would be to prevent rogue fiduciaries from engaging in transactions without at least one other independent plan level fiduciary being engaged in the Plan.

3. The Pooled Plan Provider shall carry a minimum of \$2,000,000 of Errors and Omission Liability Insurance specifically for their role as a 3(16) Plan Administrator.
4. The Pooled Plan Provider shall have a minimum of five years of industry experience serving as a 3(16) Plan Administrator, third party administrator, ERISA attorney or Pension Actuary, or possess advanced retirement plan industry designations directly related to qualified plans (such as Certified Pension Consultant, Qualified Pension Administrator, or Enrolled Retirement Plan Agent).

Thank you again for reaching out to the retirement plan community for our comments. We appreciate the opportunity to provide input this important issue. Thank you for your consideration of our recommendations.

Sincerely,

A handwritten signature in black ink, appearing to read "Terrance P. Power". The signature is written in a cursive, flowing style with a large initial "T".

Terrance P. Power, CFP, ERPA, QPA, CRPS  
President, The Platinum 401k, Inc.