



July 2, 2020

Office of Regulations and Interpretations
Employee Benefits Security Administration
U.S. Department of Labor

RE: Prohibited Transactions Involving Pooled Employer Plans Under the SECURE Act and Other Multiple Employer Plans --- Employee Benefits Security Administration -- Z-RIN: 1210-ZA28

To Whom It May Concern,

Thank you for providing the opportunity to comment on the need for possible class exemptions for entities who sponsor multiple employer association plans and PEP plans. Putting appropriate class exemptions in place will be a significant step toward expanding retirement coverage for self-employed individuals who have had limited access to retirement coverage.

This letter solely addresses the following question:

Do employer groups, associations, and PEOs described in the Department's MEP Final Rule face similar prohibited transactions to those of pooled plan providers, and do they have similar need for additional prohibited transaction relief? Are there prohibited transaction issues unique to employer groups or associations, or PEOs?

The MEP Final Rule contemplated association plans and MEPs that covered self-employed individuals. This response addresses association plans that cover self-employed individuals who affiliate with (i) a PEO or (ii) an organization that has franchisee, agency or license agreements with self-employed individuals.

Although Association Plans are not PEPs by statute, such programs will have a similar structure. The plan sponsor will be the PEO or the organization that contracts with self-employed employees to provide certain services. The sponsor is responsible for the selection of plan fiduciaries and the withholding of retirement contributions from contractual payments to self-employed employees. Since final MEP rule was explicitly designed to expand retirement plan coverage to self-employed employees, actions to facilitate the operation of are administratively feasible, in the interests of plans and their participants and beneficiaries, and protective of the rights of participants and beneficiaries of plans.

Typically, the parties in interest/disqualified persons involved with the establishment and administration of association plans or PEO plans covering self-employed individuals will require the same relief accorded such persons who are working with PEP plans. The act of withholding of retirement contributions from contractual payments to self-employed employees will also require a specific exemption, as such contributions may be considered plan assets at the time of withholding. We would expect the terms of this relief to be similar to the participant contribution regulations of 29 CFR 2510.3-

102. However, we would urge that this exemption would be drafted with the understanding that contract employees are often not paid through a regular payroll, and that the “as soon as reasonably feasible” standard enunciated in Department of Labor Regulations will not be the same for each contributing employer or even for each contribution made by the same contributing employer.

As an example, consider a self-employed employee who is in a plan sponsored by an entity which pays commissions to its self-employed agents. The entity does not pay commissions to the agent according to a regular schedule – the payment to the agent is made at the time the sale is finalized. In this case, efficient plan operation may require the entity to send plan withholdings on a specific day of the week, rather than within a set period of days from the date the commission check is issued, and the contribution deducted. Accordingly, in one case, the agent may receive a commission check on Wednesday and have his contribution made to his retirement plan account on the following Friday. In another case, the same agent could receive the commission check on Monday and have his contribution made to his retirement plan account on the following Friday. Under the DoL’s enforcement regimen as applied to regular 401(k) plan contributions, this approach would be problematic. It may, however, be the only practical way to administer an association plan benefitting self-employed employees.

Thank you for your consideration of these comments. We look forward to continuing to work with you to strengthen retirement security. If you have any questions or need further information, please contact Alonzo Church III (ac3consult@gmail.com; 404-272-7469).

Very Truly Yours

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