NAIFA
National Association of Insurance and Financial Advisors

July 17, 2020

Submitted Electronically – www.regulations.gov

Ms. Jeanne Wilson
Acting Assistant Secretary, Employee Benefits Security Administration
U.S. Department of Labor
Office of Regulations and Interpretations
Room N-5655
200 Constitution Avenue NW
Washington, DC 20210

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

Dear Ms. Wilson:

The National Association of Insurance and Financial Advisors ("NAIFA") appreciates this opportunity to comment on the Department of Labor's ("Department") request for information on pooled employer plans ("PEPs") and other multiple employer plans ("MEPs").[1] As a general matter, NAIFA supports your efforts to make these plans more accessible for employers—particularly small employers who may not otherwise offer a retirement plan for their employees. More detailed responses to the Department's request are below.

ABOUT NAIFA

Founded in 1890 as The National Association of Life Underwriters (NALU), NAIFA is the oldest, largest and most prestigious association representing the interests of insurance professionals from every Congressional district in the United States. Our mission – to advocate for a positive legislative and regulatory environment, enhance business and professional skills,

[1] U.S. Department of Labor, Employee Benefits Security Administration, Request for Information, *Prohibited Transactions Involving Pooled Employer Plans Under the SECURE Act and Other Multiple Employer Plans*, 85 Fed. Reg. 36880 (June 18, 2020).

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and promote the ethical conduct of its members – is the reason NAIFA has consistently and resoundingly stood up for agents and called upon members to grow their knowledge while following the highest ethical standards in the industry.

COMMENTS AND RESPONSES TO RFI QUESTIONS

As a framing point, NAIFA strongly supported the SECURE Act in large part because of its PEP provisions. Many NAIFA members work with small-employer clients and encourage them to adopt retirement savings plans for themselves and their employees. In general, employees are far more likely to participate in an employer-sponsored retirement plan than to open an Individual Retirement Account (IRA). Expansion of access to PEPs and MEPs – with the ease and cost efficiencies of having a professional trustee, Plan Administrator, third-party record keeper, investment advice fiduciary, etc. – would allow and will encourage more employers to offer these important retirement benefits to their employees.

The PEP structure in particular presents a tremendous opportunity to have a positive impact on retirement savings in the U.S. by alleviating many burdens that have historically barred small employers from offering retirement benefits. The administrative burden alone is huge for small business owners, including staff time, recordkeeping and reporting. Further, allowing employers to rely upon the PEP's fiduciaries to administer a plan without retaining those obligations on themselves will provide much-needed comfort to employers – particularly small employers – who previously were unwilling to take on those responsibilities and risks. At the same time, employers can continue offering matching programs to help their employees save for retirement.

NAIFA encourages the Department to make PEPs and MEPs as broadly available as possible by promoting a robust, competitive marketplace for these pooled plans. Without such a marketplace, employers and their employees will not see the benefits of these innovative retirement savings options and we will forego a potential major boost in retirement savings in the U.S.

<u>RFI Question A.1</u>: *What types of entities are likely to act as pooled plan providers?*

NAIFA believes that a broad range of entities could serve as plan providers, including businesses already providing 401(k) platforms, trade associations, insurance brokerages and third-part administrators, etc. Encouraging a robust marketplace with competition and a variety of plan providers will benefit employers and individual plan participants. So as a general matter, NAIFA urges the Department to structure any new prohibited transaction exemption ("PTE") to be broadly available to different entity types and administrable across a variety of business models.

Financial institutions already participating in the retirement plan arena are uniquely suited to be early adopters of this new model. They already have the efficiencies, capacity, know-how, product delivery systems and product familiarity, and teams of individual professionals to serve effectively as plan providers, and to complete administrative, recordkeeping, and reporting responsibilities. To avoid any delay in bringing pooled plans to the marketplace at the earliest opportunity, therefore, it is important that any PTE relief cover financial institutions like broker-dealers and insurance companies, as well as their individual agents and employees.

For *any* plan provider to offer PEPs or MEPs (i.e., not only financial institutions), it is essential that any PTE relief allow firms and their individual investment professionals to be reasonably compensated for their services and for assuming fiduciary obligations on behalf of participating employers. At the firm level, for instance, plan providers may receive flat fees from participating employers. The individuals who work with employers to educate them and get them enrolled in the pooled plan may, however, be compensated on a commission basis, which would require relief from ERISA's prohibition on self-dealing.

If the Department's PTE relief does not allow for firms and individuals to be fairly compensated, we believe it will dramatically limit the types and number of entities that will be willing to serve as pooled plan providers. Limiting provider participation will also constrain the availability and efficacy of the new PEP model.

<u>RFI Question A.2</u>: What business models will pooled plan providers adopt?

Again, we foresee a lot of variety emerging in the marketplace if the Department's PTE is structured to accommodate it. As noted above, firms and their individual professional employees and agents could be compensated in a number of different ways. Offering a range of compensation options to prospective participating employers is good for competition and prices, and will allow differently situated employers to choose the arrangement that works best for them.

Regarding use of affiliates, it may depend on the entity type and business structure. NAIFA, for example, is a 501(c)(6) organization supported by member dues. If we were to offer a PEP to our members, we likely would create a separate affiliate entity to manage that program and its financials. But not all entities would need to take that approach.

Again, any PTE relief should preserve flexibility for different business models to create the most robust PEP/MEP marketplace.

<u>RFI Question A.5</u>: Is there a need for additional PTE relief?

Pooled plan providers may be able to rely on existing PTEs to offer these new arrangements. We caution, however, that shoehorning these innovative product offerings into PTEs that were not designed or implemented with these types of plans in mind, could limit plan provider participants (in number and type), competition, and plan design options, and constrain PEPs and MEPs to a more one-size-fits-all model. For this reason, NAIFA believes it is worth the Department constructing a new PTE to accommodate these unique retirement plans.

<u>RFI Question C.1</u>: How many and what types of employers are likely to participate in PEPs and MEPs?

As noted above, we believe the real benefit and opportunity with PEPs and MEPs is for small and mid-sized businesses that do not have sufficient back-office support or expertise to take on the tremendous obligations and responsibilities of offering their own retirement benefit plan. The PEP model, we think, will be especially attractive and popular for these employers because of the dramatically reduced burdens and costs on employers.

Regardless of employer size, the goal should be to maximize take-up rates. The more employers who participate, the more employees who will be able to take advantage of these plans and save for their retirement.

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Again, we appreciate this opportunity to provide comments and applaud the Department's efforts to expand PEP and MEP accessibility – a move we believe could result in more employees receiving retirement benefits and increase overall savings. Please do not hesitate to contract me if I can provide further information or answer any questions.

Sincerely,

Kevin Mayeux
Chief Executive Officer
NAIFA