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Office of Exemption Determinations  
Employee Benefits Security Administration  
Room N-5655  
U.S. Department of Labor  
200 Constitution Avenue N.W.  
Washington, D.C. 20210

**Re: Prohibited Transactions Involving Pooled Employer Plans Under the  
SECURE Act and Other Multiple Employer Plans  
Z-RIN 1210-ZA28**

This letter is being submitted on behalf of the Defined Contribution Institutional Investment Association (DCIIA). We appreciate the opportunity to comment on the Department's Request for Information on "Prohibited Transactions Involving Pooled Employer Plans Under the SECURE Act and Other Multiple Employer Plans (Z-RIN 1210-ZA28)."

DCIIA is pleased that the Department is seeking input on Pooled Employer Plans (PEPs). Members of the DCIIA community, which include leading record-keepers, investment consultants and advisers, investment managers, education and advice providers, trustees and custodians, law firms, plan sponsors and other industry participants, support initiatives that expand access to retirement savings. We welcome open architecture solutions, competition and innovation, and initiatives that promote retirement savings, improve retirement income adequacy, and promote institutional ERISA-covered defined contribution plans.

For these reasons, many members of the DCIIA community support the establishment of PEPs, as provided for under the SECURE Act, as a means to help bridge the retirement savings gap and improve retirement income adequacy. These members are particularly supportive of PEPs when they (1) offer institutional features, (2) provide a marketplace to promote access to, and competition within, institutional products and services and their providers, and (3) seek to encourage participation in the current employer-based retirement system.

The Department has requested information to help identify and draft prohibited transaction exemptions to support the adoption and operation of PEPs. In particular, the Department has requested "the possible parties, business models, and conflicts of interest that respondents anticipate will be involved in the formation and ongoing operation of PEPs."

DCIIA believes that the Department should approach potential prohibited transaction exemptions from the starting point that PEPs could be a valuable tool to help achieve the important goals noted above, especially in helping to bridge the retirement savings gap and to improve retirement income adequacy. To the extent that PEPs can support retirement savings, it follows that potential exemptions should be viewed as a means to help facilitate—rather than hinder—the use of PEPs.

For example, one significant value of PEPs is that they may overcome challenges faced by certain small employers that have not previously adopted retirement savings plans. PEPs may create a platform for retirement plan service providers to offer services to support such small businesses and their employees using institutional features, products and services. DCIIA has identified, from academic and industry literature, and from the experience of its service provider members, two key challenges to offering products to small employers:

- The inability of many small plans and their employer plan sponsors to cover the fixed costs of a plan; and
- The necessity of using an outsourced payroll service when a 401(k) or other salary deferral type plan is offered, which complicates administration.<sup>1</sup>

PEPs may be able to overcome these challenges by creating economies of scale. Perhaps not surprisingly, nearly 32% of small employers who currently do not offer a plan indicated they would be either “very” or “somewhat” likely to consider joining a multiple employer plan. According to a 2013 survey by the National Small Business Association, 60% of small businesses handle payroll internally and only 40% outsource.<sup>2</sup> For that reason and the potential of PEPs to close the coverage gap, the Department may want to view prohibited transaction exemptions and other related regulatory initiatives as a way to support service providers in order to make PEPs feasible and cost-effective through streamlined regulatory administration and reporting requirements.

To be clear, DCIIA is not suggesting that the Department sacrifice participant protections. Instead, DCIIA believes that the Department can take a thoughtful approach to prohibited transaction exemptions that ensures both appropriate participant protections while removing barriers that might limit the use or cost effectiveness of PEPs.

DCIIA encourages the Department to consider exemptions that support plan design features that improve funding and participation. The Pension Protection Act of 2006 (PPA) clarified and simplified administrative processes that plan sponsors can adopt to implement institutionalization via plan design features such as automatic enrollment and automatic escalation of participant contributions. These funding features can significantly improve retirement outcomes for plan participants. DCIIA encourages the Department to think of similar features for PEPs, and exemptions that will be needed to permit such automatic features.

The Department could also consider exemptions that help maximize access to other features and providers that improve retirement savings outcomes. DCIIA understands that the goal is to avoid conflicts of interests when providing a PEPs program. However, there may be circumstances when it could be appropriate to include exemptions that permit PEP sponsors to utilize independent and/or related or affiliated service providers or managers. PEP sponsors may wish to partner with different providers based on the experience and expertise of the PEP sponsor and those with whom they might wish to do business. Some PEP

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<sup>1</sup> National Small Business Association, “2013 Small Business Taxation Survey,” April 11, 2013.

<sup>2</sup> Catherine Collinson, “The Retirement Readiness Imperative: Overcoming the Challenges Faced by Small Companies,” 14th Annual Transamerica Retirement Survey, Transamerica Center for Retirement Studies, October 2013.

sponsors may wish to provide turnkey services and will have the experience and expertise to do so. Others may look to bring in their affiliates with appropriate expertise or may want to partner with a combination of affiliated and unaffiliated services providers. As with any type of innovation, it should be expected that the architecture, structure and governance of PEPs will likely change over time. While these relationships should be appropriately regulated, such regulation (and authorizing prohibited transaction rules in particular) should not operate to preclude access to a wide range of different providers or managers, to best allow for innovation and development of competitive market solutions that improve access to retirement savings. For example, exemptions should anticipate (and not hinder) PEPs utilizing a wide range of institutional investment offerings (such as institutional mutual fund share classes, collective investment trusts and separately managed accounts). Similarly, exemptions may need to anticipate (and not hinder) PEPs seeking to offer a broad range of investment education and managed account services, which help participants take an active role and effectively improve their savings and investment strategies.

More specifically, DCIIA has observed academic and industry literature that concludes that more professionally managed plans outperform less “institutionalized” plans. For example, several studies have shown that DB plans have outperformed DC plans over the long term, a result that has been attributed to various “institutional” factors, including lower investment fees for DB plans, bundled administrative fees for DC plans, differing equity allocations, and the use of a broader array of asset classes by DB plans, resulting in lower volatility. Some of these advantages can be captured, at least in part, in a DC environment by adopting institutional strategies.

Accordingly, we encourage the Department to ensure that its guidance supports, rather than hinders, access to institutional DC plan features. Institutional DC plan structures seek to improve the retirement outcomes of working Americans in traditional employer-sponsored DC plans and should similarly be available through MEPs. Appropriate prohibited transaction exemptions can help increase such access, close the retirement savings gap and improve participant outcomes.

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Thank you for considering DCIIA’s position. As you continue to review potential exemptions, please do not hesitate to reach out if DCIIA can offer more direct assistance.

Sincerely,



Lew Minsky

President and CEO