GROOM LAW GROUP

Stephen M. Saxon
(202) 861-6609
ssaxon@groom.com

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The Hon. Jeanne Klinefelter Wilson
Acting Assistant Secretary
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20210

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

Dear Assistant Secretary Wilson:

On behalf of our clients working in the retirement services industry, we would like to express appreciation for EBSA's timely efforts to furnish a mechanism under which pooled plan providers ("PPPs") may register with the Department and the Department of the Treasury, in fulfillment of the SECURE Act's statutory requirement. Because January 1, 2021 is the effective date of the SECURE Act provisions allowing "pooled employer plans" ("PEPs") to begin operations, it is essential that PPPs have a means for discharging their registration obligations on or before that date.

As only 92 days will remain between the close of the comment period for the Department's registration proposal (the "Proposed Rule") and that January 1, 2021 effective date, our clients' primary concern is that the registration proposal be finalized and made effective as expeditiously as possible. With this timing sensitivity in mind, we have limited our comments to a handful of key points, as listed below.

1. **Defining the moment at which a PPP begins operations.** A number of our clients that intend to serve PEPs as PPPs have been actively preparing to commence business operations (i.e., to accept an appointment as a PPP by adopting employers of a PEP) on or shortly following January 1, 2021. In several instances, those clients have already embarked on efforts to advertise and market these planned-for future business operations. A number of others plan to begin marketing efforts later in calendar year 2020. In our view, the Proposed Rule would inappropriately and prematurely deem a PPP to have commenced operations at the moment in time that it begins publicly marketing its services as such. The proposal to equate public marketing efforts with the commencement of business operations is problematic for several reasons –

- First, because paragraph (b)(1) of the Proposed Rule would require a PPP to file a complete and accurate Form PR with the Department at least 30 days before beginning operations, providers who engaged in public marketing activities during calendar year 2020 or early in calendar year 2021, would immediately fail the advance registration requirement. This unfortunate consequence could be avoided if the Proposed Rule's definition of "beginning operations as a pooled plan provider" were changed to conform to our clients' reasonable expectation that a PPP's business operations commence coincident in time with the effective date of the PPP's first appointment as such by an adopting employer under a PPP.

- Another compelling reason to so modify the definition is to substitute an objective timing measurement for one that is highly subjective and susceptible to misunderstanding and potential for disagreement. In this regard, the moment at which public marketing of PPP service begins may be unclear. An announcement at an industry conference of a provider's intent to enter the marketplace as a PPP, for example, could be construed as public marketing by some but not by others. Re-defining the commencement of operations as the point in time that a PPP is first appointed as such would bring a preferable measure of certainty and objectivity to the advance registration requirement.

2. **A shortened advance registration requirement should be available for early movers.** As noted, a number of providers intend to being accepting appointments as PPPs effective as early as January 1, 2021, the first day of next year. Absent a shortened advance registration requirement for such early movers, compliance with the Proposed Regulation's requirement that Form PR be filed with the Department at least 30 days in advance of the commencement of operations would require at least a month's postponement, until February, 2021, of those plans. That period of delay assumes that January 4, 2021, the first business day of next year, would be the earliest date on which Form PR could be filed with the Department under a final and effective rule. Providers that have undertaken the effort and expense to plan for a January 1, 2021 business commencement should not be unfairly penalized by having to delay for a full month to await expiration of the 30 day notice period.[1] Accordingly, we urge that the Department modify the advance registration requirement for the first 90 days of calendar year 2021 by allowing PPPs, during that time period, to satisfy the Form PR advance filing

[1] A PPP registration process that effectively delays the earliest date by which a PEP may launch to something later than January 1, 2021 could also raise complications for employers seeking to continue or add a safe harbor plan design in connection with their adoption of the PEP. As noted in the preamble to the Proposed Rule, a primary objective of the PEP legislation is to remove barriers to broader usage of multiple employer plans. Impediments to the adoption or continuation of safe harbor plan designs under PEPs would frustrate this legislative objective.

requirement by filing "on or before" the date of beginning operations as a PPP. Alternatively, the Department's final rule should permit early registration by PPPs by commence the acceptance of registration applications no later than November 1, 2020, in order that registrations be effective by the first of next year.

3. **Form PR should be streamlined.** Proposed Form PR would require the disclosure of eleven categories of information. In several instances, the informational items required under the form are either inappropriately vague or unduly burdensome, as listed below –

   - Sub-paragraph (b)(1)(vi) requires the name and contact information for the "primary compliance officer of the pooled plan provider." Some organizations employ several different primary compliance officers, each with responsibility for a discrete area of legal and regulatory compliance. For example, an organization may have one primary compliance officer for securities law matters; another primary compliance officer may oversee anti-money laundering compliance activities, and yet another may be responsible for privacy law compliance. Those officers may or may not report to a common supervisor. Other organizations may not have a designated "primary compliance officer" for any particular function. We object to item 6 because it pre-supposes that every organization or person registering as a PPP will, of necessity, have a primary compliance officer, which is not necessarily the case. We also object to item 6 because it carries with it an unsupported implication that each entity registering as a PPP is required to designate a primary compliance officer with responsibility for all PPP/PEP-related matters, which is simply not the case.

   - Sub-paragraph (b)(1)(x) requires a statement disclosing criminal conviction information related not just to the PPP itself, or of its senior management, but as to *any employee*. Several of our clients that are planning to serve as PPPs have thousands of employees. Yet only a limited number of those individuals serve in an executive decision-making capacity that could reasonably affect the conduct of the enterprise as a fiduciary. Holding up the criminal convictions of rank and file employees to unnecessary public scrutiny serves no useful purpose and is unnecessarily burdensome.

4. **The list of Reportable Events that require supplemental filings should be streamlined.** The list of Reportable Events that would trigger a supplemental filing obligation on the part of the PPP includes several categories that are burdensome, not useful, and that should be removed. Moreover we are concerned by the implication inherent in certain of the proposed Reportable Event categories that PEP arrangements may be uniquely prone to abuse relative to single-

employer plans. In the competitive market environment in which PEPs will operate, we would expect employer demand for transparency and efficiency will operate as a significant check on any such susceptibility to abuse, as it does in the single employer plan marketplace today. Accordingly, we note –

- Sub-paragraph (b)(3)(iii) would require a PPP to make a supplemental filing upon receipt of written notice of *any* administrative or enforcement action related to the provision of services to *any* employee benefit plan, including a PEP by *any* regulatory authority. Many financial services organizations that intend to furnish services as PEPs are already service providers to numerous employee benefit plans. In the course of their ordinary business operations, these providers are routinely subject to investigations, audits and similar administrative actions by various federal and state agencies. A requirement to file a supplemental Form PR each time an agency initiates an examination of some sort would be unduly burdensome, would not impart any useful information as to the provider's fitness to serve as a PPP, and should be removed from the Proposed Rule.

- Similarly, sub-paragraph (b)(3)(iv) and (v) would require supplemental filings upon the occurrence of certain legal events involving not just the senior management of the PPP, but *any employee.* Consistent with our comments on paragraph (b)(1)(x), above, we question the need to report such events insofar as they may involve rank and file employees who are not in a position to affect the conduct of the enterprise as a fiduciary. We think these Reportable Event categories should be streamlined by removing the reference to "any employee" of the PPP and by limiting the scope of the personnel covered under these categories to members of PPP senior management, executive officers, and directors.

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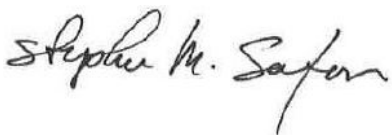
We would be happy to have future discussions with the Department on this matter.

Very truly yours,



Stephen M. Saxon

cc: David C. Kaleda
Thomas Roberts
Kevin L. Walsh