Smart

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

July 20th, 2020

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

This letter is being filed on behalf of Smart USA Co. 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).”

Smart is one of the world's fastest growing retirement technology businesses, delivering cost-effective, innovative solutions to retirement plan sponsors globally. Smart's technology platform was designed from the start to specialize in MEPs and PEPs. Our Smart Pension Master Trust is one of the largest in the UK, serving over 70,000 plans globally. We will begin serving US companies within the next month. We believe that our cost-effective, innovative PEP solutions can be very effective in expanding retirement coverage in the US.

In our attached white paper, we discuss below our vision of how PEPs can thrive in the U.S. without conflicts of interest, which is a key question in the Request for Information. Based on our extensive experience in this area, we believe that PEPs can address a wide range of retirement challenges for companies of all sizes: expanding coverage, lowering costs, facilitating guaranteed income for life, protecting participants, using technology to make retirement issues seamless and simple, and reducing fiduciary liability and responsibilities for employers by shifting those liabilities to professional fiduciaries.

Thank you for considering Smart's position. Please do not hesitate to reach out if we can be of more direct assistance.

Yours sincerely,

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Smart

Securing the future of retirement - regulation and innovation

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About Smart

Smart is one of the world's fastest growing retirement technology businesses, delivering cost-effective, innovative solutions to retirement plan sponsors globally. Smart's technology platform was designed from the start to specialize in multiple employer plans (MEPs) and pooled employer plans (PEPs). Our Smart Pension Master Trust is one of the largest in the UK, serving over 70,000 employers globally. We will begin serving US companies within the next month. We believe that our cost-effective, innovative PEP solutions can be very effective in expanding retirement coverage in the US.

We discuss below our vision of how PEPs can thrive in the U.S. without conflicts of interest, which is a key question in the Request for Information. Based on our extensive experience in this area, we believe that PEPs can address a wide range of retirement challenges for companies of all sizes: expanding coverage, lowering costs, facilitating guaranteed income for life, protecting participants, using technology to make retirement issues seamless and simple, and reducing fiduciary liability and responsibilities for employers by shifting those liabilities to professional fiduciaries.

Securing the future of retirement – regulation and innovation

The SECURE Act, which passed right at the end of 2019, aims to improve the availability and functioning of retirement plans. One of the key provisions relates to the creation of pooled employer plans (PEPs). Rather than requiring each employer to sponsor its own plan, PEPs allow otherwise unrelated employers to group together to form a retirement plan with the goal of increasing economies of scale and ease of use. This could transform the retirement landscape by allowing all participants, regardless of the size of their employer, the opportunity to enjoy the low cost and robust fiduciary protection of a large corporate retirement plan.

Furthermore, whereas participants in single employer plans typically transfer to a retail solution once they retire, PEPs are the ideal vehicle to extend the benefits of an institutional retirement plan to also encompass the retirement phase. This means that participants could benefit from lower costs and institutional design throughout their entire retirement saving experience.

PEPs as such are not a novel concept. Multiple employer plans (MEPs) have long been available in the US, but employers have been required to share some commonality. Other countries use structures that are similar to PEPs – Australia has its superannuation funds, the UK has its master trusts (and group personal pensions). In both countries, most retirement assets are held in the pooled structures. Most of the UK and Australian pooled plans are sponsored by private entities and many of these are sponsored by financial services providers. Robust governance processes, including independent fiduciary oversight, ensure that participant protections are at least as strong as in single employer plans. We would expect that US PEPs would seek to follow similar governance models.

While every country is different, the global experience can offer some useful pointers on how the market for PEPs may develop in the US and some insights for policymakers to bear in mind as they draft legislation and regulations. A notable difference compared to other countries is that retirement plans in America are voluntary. With the SECURE Act, regulators are employing a dual strategy of providing tax credits to incentivize employers while simultaneously removing some of the fiduciary obstacles to offering a plan.

In order to be successful in expanding coverage without a mandate, the retirement system needs to be as **simple** as possible for both employers and participants to use, it must be at least as **safe** as single employer plans, and it should be **smart** enough to include innovative solutions to improve participant outcomes. Achieving this will require a supportive regulatory framework combined with innovations from the private sector providers.

Simple for employers to provide and participants to use

While most large employers automatically enroll their employees into retirement plans, small employers, with their more limited resources, are much less likely to offer a plan. After SECURE, offering a retirement plan will still be voluntary. Tax incentives are a good start, and to make these as effective as possible, it is important that offering a plan should involve minimal effort (and liability) for the employer.

To this end, we would expect that many pooled plan providers (PPPs) would wish to embrace a service model where employers could offload all the fiduciary responsibility for administration and investments to the PPP. In this case, the employer would only be responsible for prudently selecting and monitoring a reputable PEP at a reasonable price. Some of the current simplified 401(k) solutions that are designed for small employers may also adopt a similar model.

Technology has a critical role to play in making plans easy to use. For employers, user-friendly interfaces, automation and seamless integration with payroll systems combine to make adopting a plan extremely simple.

For example, Smart Pension, our UK master trust, can onboard a new employer in less than three minutes.

For plan participants, sophisticated technology can provide interactive interfaces that allow participants to easily check their balances, manage their investments and seek information and guidance. It also makes it possible to employ behavioral insights to make sure that the participant receives the information in the most relevant and helpful way based on their individual goals.

Initially, investment menus for the small employer market are likely to be quite simple. They will probably offer a target date fund (TDF) as the default option and a limited number of equity and bond funds. Most automatically enrolled participants tend to be very passive investors, for example, in the Smart Pension Master Trust in the UK, 99% of participants choose to stay in the default fund. The economies of scale from aggregating small plans should lead to cost savings for participants. Average fees for participants in plans with more than $1 bn in assets are only 0.28%, compared with 1.47% in plans with less than $1 mn.[1]

Over time, as they gain scale, even PEPs designed for small employers could start to incorporate more sophisticated elements into their default funds. From the participant's perspective, the solution is as simple to use as before, but participants achieve access to a range of asset classes that would usually only be available to large institutional investors. This could further benefit participants by improving returns. The returns on DB plans have exceeded those of DC plans by 0.7%.[2] Integrating guaranteed income into a DC framework is also a core component of SECURE and the PEP is a natural place to offer those solutions over time. Some of the Australian superannuation funds are also investigating the possibility of pooling assets to provide guaranteed income in retirement, rather like the defined benefits offered by traditional corporate plans. Thus, while being simple to adopt, PEPs afford participants the opportunity to receive the benefits of a large institution while working for employers of all sizes.

1 The Brightscope / ICI Defined Contribution Plan Profile: A Close Look at 401(k) Plans, 2016
2 Munnell, Aubry & Crawford "Investment Returns: Defined Benefit vs. Defined Contribution Plans", CRR Issue in Brief December 2015, 15-21

As safe as large DC plans

Ultimately, the success of the retirement system will be measured in terms of its ability to provide robust retirement outcomes for participants. While it is important for the employer and participant experience to be as seamless and streamlined as possible, this must not be at the cost of reduced fiduciary protection for participants. Participants must still be provided with appropriate investment products at a reasonable cost. For employers to be able to pass off their fiduciary responsibility, there must be a clear model for assuming this responsibility elsewhere in the system.

In the UK, we have seen many different business models for providing pooled plans or master trusts. These can be founded by a wide variety of financial service providers, including asset managers, recordkeepers, administrators and consultants. In many cases, the founder also provides some services to the plan for compensation. The fiduciary responsibilities of the administrator and the investment advisor are more limited than in the US. To mitigate potential conflicts of interest, master trusts and group personal pension plans must be overseen by an independent fiduciary. Group personal pension plans are overseen by an independent governance committee that provides oversight and has the power to alert regulators in the case of irregularities. Master trusts, on the other hand, are overseen by an independent board of trustees which has decision-making powers and responsibilities similar to those of a corporate plan sponsor.

For example, in the Smart Pension Master Trust in the UK, Smart Pension is the founder of the trust. It is also the administrator and recordkeeper for the trust. The trust employs an external investment advisor and external investment managers. The board of trustees consists of five independent members who are not affiliated with Smart Pension or any of the other service providers. In its fiduciary capacity, the trustee board appoints and oversees all the service providers – including Smart Pension – and is responsible for acting in the interests of participants. It must ensure that the fees paid out of plan assets are reasonable, the selected default investment (similar to the QDIA) conforms with requirements and it must submit regular reports to The Pensions Regulator.

A similar governance model would work in the US without any need for new regulation, with the PPP acting as named fiduciary for both administrative and investment oversight. Indeed, this is similar to the model currently employed by MEPs. For employers, it would be easy to use and to compare providers of this type of fully outsourced plan. Provided the PPP is independent of the underlying service providers, it could also be possible for some of the service providers to be affiliated among themselves (for example the recordkeeper and investment manager could belong to the same group).

Smart enough for the future

The transition to a pooled plan structure offers an opportunity to reimagine the retirement plan. For participants who are enrolled in a plan, the current system is effective at providing a simple and safe way of saving for retirement. However, there is a sharp discontinuity at the point of retirement, when most participants exit their employer-provided institutional plan and enter a retail solution.

Pooled employer plans are logical vehicles to provide solutions that convert into income streams once the participant reaches retirement age.

Several asset managers have already designed investment solutions for QDIAs that convert into retirement income solutions once the participant retires. In some cases, these include immediate or deferred annuities, either on an opt-in or default basis. For participants, a QDIA that provides income after retirement offers many advantages. Apart from the simplicity and convenience of an automated solution, this also means that participants can continue to benefit from low institutional pricing and access to sophisticated products during the retirement phase. For example, if participants purchase an annuity as part of a bulk purchase within the retirement plan, the absence of distribution fees and reduced adverse selection means that the cost is likely to be considerably lower than if they had purchased the same annuity individually in the retail space.

While integrated retirement investment solutions already exist, implementing these is currently a key challenge. Legacy recordkeeping platforms, that were designed for accumulation in a single employer structure, are not well-suited for providing income after retirement.

Furthermore, not all employers are eager to keep participants in their plan post-retirement. PEPs could solve all of these problems. As pooled plans are not linked to any one employer, there is no obvious need for participants to leave the plan even if they have left the employer. The transition to pooled plans will also require the use of new technology platforms. These purpose-built modern platforms will make it easy to aggregate multiple small plans and implement investment solutions that provide income during retirement at a low cost.

For participants, this means that they will be able to benefit from institutional pricing and design throughout their entire retirement journey. Sophisticated online interfaces will provide participants with tools to guide them through retirement planning and allow them to self-direct their drawdown directly from the platform. PEPs could host a range of decumulation options, from a default to a managed account, and use their scale to offer aggregated pricing for annuities. DC plans could increasingly incorporate some of the positive features of DB plans, such as a lifetime guarantee that removes the risk of participants outliving their savings.

Different types of PEPs will target different segments of the market. Based on the UK experience, those founded by recordkeepers or administrators are typically simple solutions designed for small employers, whereas consultant-led plans offer customization for more sophisticated employers. In the UK, large employers – including multinational companies in the financial services, transport and technology sectors – have increasingly chosen to offload their retirement plans to a master trust. In Australia, virtually all private sector employers direct their employees to an external superannuation fund for their retirement savings needs. We may initially see many PEPs of varying sizes, but over time, we are likely to see a process of consolidation.

Expanding access to retirement plans improves expected outcomes for both future retirees and society as a whole. According to a recent survey by the Employee Benefits Research Institute, 78% of workers with a retirement plan are confident that they will have enough money to last them through retirement, compared with only 40% of workers without a plan[3]. Sufficient retirement savings balances set individuals up for a comfortable retirement and reduce the risk that they will become a burden on society in later life.

In our retirement plan of the future, we envision all employees, regardless of where they work, participating in a well-designed retirement plan that offers them high-quality, good value investment solutions and guides them effortlessly through the retirement saving experience. These same benefits of automation, sophistication and economies of scale should extend to the retirement phase to provide participants with a simple, safe and smart end-to-end retirement experience.

3 EBRI Retirement Confidence Survey 2020

Public and private sector collaboration to create the retirement system of the future

Improving the retirement landscape in the US has always relied upon collaboration between the public and private sector. The public sector has provided a framework through regulations like those issued under the default investment provisions of the Pension Protection Act of 2006 (PPA). The private sector, in turn, has responded with innovations that have helped to improve outcomes for participants, such as target date funds.

The SECURE Act has generated a lot of interest in PEPs. This may also spill over as increased interest in retirement plans among small employers, regardless of whether they embrace a PEP or one of the other existing solutions. The UK achieved a spectacular increase in private sector retirement coverage from 42% in 2012 to 86% in 2019[4] by requiring all employers to offer a retirement plan and automatically enroll employees (with an employee option to opt out). The ability to offload fiduciary responsibility to a PEP, together with the incentive offered by the tax credit, may well be effective at boosting retirement coverage. However, the impact in the US is likely to be more modest than in the UK, as provision and participation will continue to be on a voluntary basis, and achieving full coverage may yet require a mandate at some future date.

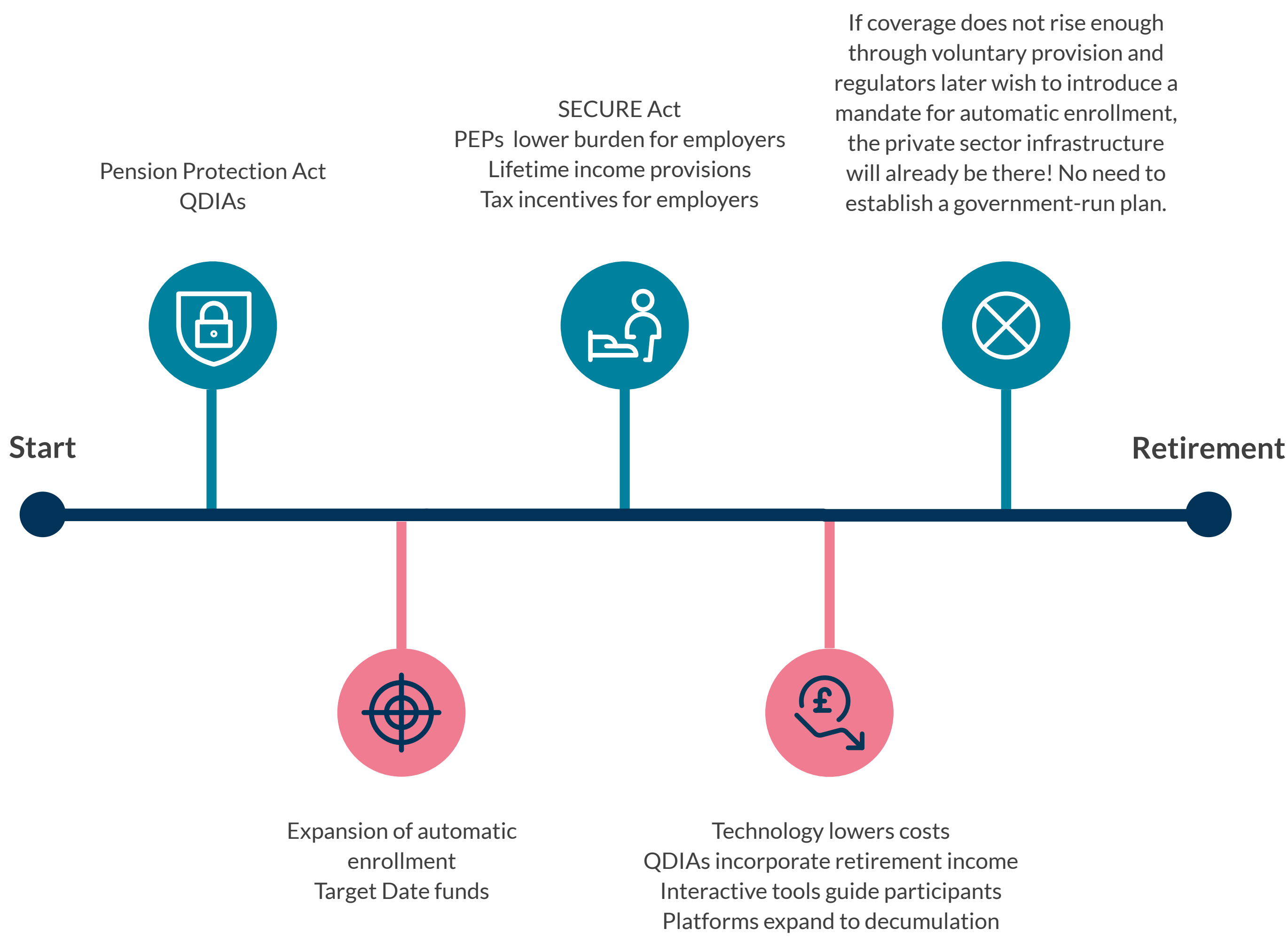
When the UK introduced its mandate for coverage and automatic enrollment, it simultaneously established a state-sponsored provider, NEST, as a provider of last resort so that every employer, no matter how small, would be able to access an affordable retirement plan. With the benefit of hindsight, NEST may not have been necessary. Private sector providers, such as the People's Pension or Smart Pension, have successfully employed sophisticated, low-cost technology to effectively serve the small employer market at a comparable or lower cost.

Successful implementation of SECURE would pave the way for the US to expand national coverage without a need to establish a government-sponsored plan. All legislators would need to do is to provide the regulatory framework, as all the necessary infrastructure would already exist. This would follow in the long tradition of public-private sector collaboration to deliver better retirement outcomes for participants.

4 Department for Work and Pensions "Workplace participation and savings trends: 2009 - 2019"

The path to a secure retirement lies in public-private collaboration

Public sector regulation



Private sector innovation

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