6501 Deane Hill Drive
Knoxville, TN 37919
865.670.1844

July 20, 2020

Office of Exemption Determination
Employee Benefits Security Administration
Room N-5665
U.S. Department of Labor
200 Constitution Avenue, NW.
Washington, DC 20210

RE: Regulation Identifier Number (Z-RIN 1210-ZA28)
Request for Information regarding prohibited transactions
involving pooled employer plans and other multiple employer plans.

Good day. TAG Resources, LLC ("TAG") is one of the country's leading providers of "aggregated plan services," under which we offer programs which provide the start-up and small plan markets the advantages of scale which is otherwise unavailable to them. These programs include Multiple Employer Plans, for those organizations meeting the definition of "Employer" Under Section 3(5) of ERISA—Association Retirement Plans and Other Multiple-Employer Plans, 84 FR 37508 (July 31, 2019), programs we refer to as "Multiple Employer Aggregation Programs," (or "MEAPs"), which are designed to mimic the most favorable aspects of multiple employer plans ("MEPs") and, Pooled Employer Plans following enactment of The Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019, Pub.L. 116–94, ("the Act").

Pursuant to Notice by the Employee Benefits Security Administration, appearing in 85 FR 36880, published June 18, 2020, TAG herein responds to certain enumerated questions contained therein related to pooled employer plans and other multiple employer plans. We appreciate the opportunity to contribute information for your consideration as the Department formulates guidance for implementation of the SECURE Act's provisions relative to defined contribution plans.

Please find TAG's specific responses and comments, infra. The following were composed by TAG Resources, LLC and the Law Office of Robert J. Toth.

1. *What types of entities are likely to act as pooled plan providers? For example, there are a variety of service providers to single employer plans that may have the ability and expertise to act as a pooled plan provider, such as banks, insurance companies, broker-dealers, and similar financial services firms (including pension recordkeepers and third-party administrators). Are these types of entities likely to act as a pooled plan provider? Are some of these entities more likely to take on the role of the pooled plan provider than others? Why or why not? How many entities are likely to act as pooled plan providers? Will a single entity establish multiple PEPs with different features?*

Response: Broker-dealers, recordkeepers, third party administrators, insurance companies, banks, mutual fund families and other financial services firms now, prima facia, appear to meet the legal requirements to sponsor a PEP as the Pooled Plan Provider. This significant regulatory change may encourage financial service companies and advisory firms to consider taking on the responsibilities of sponsoring a PEP and the pooled plan provider. Indeed, banks and insurance companies that choose to be PPPs may, if authorized by the provisions of the plan, meet the current exemption to statutory prohibited transaction rules, and include their own investment products in the plan's investment lineup. Arguably, current prohibited transaction exemption 77-4 would also allow insurance companies or mutual fund families to add their mutual fund products in the plan's investment options.

However, the most "natural"candidates to actually take on the roll of pooled plan provider would be third-party administrators, with established 3(16) fiduciary practices, and independent recordkeepers, particularly those firms with substantial fintech capabilities and the ability to co-ordinate data from large numbers of unrelated payroll feeds that are so essential for successful operation of a multiple employer plan.

A plan's document designates the provider serving as PPP a named fiduciary of the plan and a plan administrator. As such, the pooled plan provider is a service provider to the plan with responsibility to service the PEP by performing certain services, or selecting service providers to perform, administrative duties and functions necessary to comply with all applicable law and regulation and maintain the tax qualified status of the plan.

A third party plan administrator, as defined in 29 USC section 2510.3-16, can accept delegation from plan sponsors to perform many of the administrative and fiduciary duties necessary to compliant administration of a plan. As such, a plan administrator is familiar with fiduciary plan administrator functions springing from ERISA Title 1 and Tile 2 and a plan's document, as well as those non-fiduciary administrative obligations arising under state law of contracts, as well as the collection of services that a PPP would necessarily be responsible for procuring, including hiring and monitoring of covered service providers, nondiscrimination testing, vesting and eligibility tracking, delivery of participant notices, adjudicating claims disputes, approving QDROs, administer the exit from a MEP, into a SEP, of any plan leaving a multiple employer arrangement, and signing and filing Form 5500 informational returns on behalf of the plan.

2. *What business models will pooled plan providers adopt in making a PEP available to employers? For example, will pooled plan providers rely on affiliates as service providers, and will they offer proprietary investment products?*

Response: A PEP structure may provide that all services related to the plan will be provided by the PPP for a set cost, which would be contracted with, disclosed to and approved by the plan's participating employers. The PPP then could hire any service provider, including an affiliate, to provide any number of fiduciary and administrative services. Compensation received by the PPP will be subject to the disclosure and approval rules under the service provider exemption, 408(b)(2). Accordingly, any number of PEP designs can be accommodated under existing ERISA rules, and the PPP will simply need to decide upon the type of operational design under it will be able to operate.

3. *What conflicts of interest, if any, would a pooled plan provider (along with its affiliates and related parties) likely have with respect to the PEP and its participants? Are there conflicts that some entities might have that others will not?*

4. *To what extent will a pooled plan provider be able to unilaterally affect its own compensation or the compensation of its affiliates or related parties through its actions establishing a PEP or acting as a fiduciary or service provider to the PEP? What categories of fees and compensation, direct or indirect, will pooled plan providers and their affiliates and related parties be likely to receive as a result of operating a PEP, including through the offering of proprietary investment products? Are there likely to be any differences in types of fees and compensation associated with operation of a PEP as compared to a single employer plan?*

6501 Deane Hill Drive
Knoxville, TN 37919
865.670.1844

Response to 3 and 4: The Plan's participating employers ("PE") are responsible fiduciaries and plan sponsors. The PE can(1) retain all authority, or (2) delegate authority.

Scenario 1. A PEP structure may provide that all services related to the plan will be provided by the P3 for a set cost, which would be contracted with, disclosed to and approved by the PE. The P3 then could hire any service provider, including an affiliate, to provide any number of fiduciary and administrative services. There are a number of details which would

otherwise apply, and this comment is provided only as a high-level example (for example, should a package include the provision of investment manager services, the P3 contract would likely include an investment management agreement), but this sort of arrangement would be possible under existing rules. Under it, the PE is the responsible plan fiduciary under 408(b)(2) for the entire package of service providers, as the PE is effectively hiring those parties- the P3 could is not "hiring itself." The P3 should be required to provide enhanced disclosures ours to the PE to enable their proper monitoring of those service providers. Note that none of the service providers retained under this arrangement could exercise their authority to increase the fiduciary's compensation.

6501 Deane Hill Drive
Knoxville, TN 37919
865.670.1844

Scenario 2. The P3 could instead design the PEP so that it merely charges for its own specific responsibilities, while being delegated the authority under the arrangement to retain any other necessary service providers for which the PEP would pay. The PE would be the responsible plan fiduciary with regard to the hiring of the P3, but the P3 would then be delegated the authority of being the responsible plan fiduciary with regard to contracting with all other service providers. The P3's monitoring responsibilities under this arrangement would be significantly less than it would be under Scenario 1.

The P3 could not, in the exercise of this authority under this scenario, retain and compensate an affiliate to provide plan services, nor could it unilaterally decide to increase its services (or compensation for such services) to the plan without the disclosure to, and approval of, the PE.

5. Do respondents anticipate that the Department's existing prohibited transaction exemptions will be relied on by pooled plan providers, and if so, which exemptions are most relevant? Are any amendments needed to the Department's existing exemptions to address unique issues with respect to PEPs? Do respondents believe that there is a need for additional prohibited transaction exemptions? If so, please describe the specific transactions and the prohibited transactions provisions that would be violated in connection with the transactions.

Response: Relative to the PPPs provision of services. We would recommend a modification of the regulations under 408(b)(2) to discuss the specific application of the service provider exemptions in the case of a P3 providing services to the PEs.

6501 Deane Hill Drive
Knoxville, TN 37919
865.670.1844

7. To the extent respondents do not believe additional prohibited transaction relief is necessary, why? How would the conflicts of interest be appropriately addressed to avoid prohibited transactions? Are different mitigating provisions appropriate for different entities? Why or why not?

Response: The issues in question 7 are addressed supra.

B. Plan Investments

The role the P3 will serve with regard to the plan's investments will be determined by the design of PEP. So, for example, depending upon the manner in which the services are structured, the P3 can serve as the investment manager under a PEP as long as the PE is the responsible plan fiduciary and the manager cannot affect its own compensation by virtue of its investment decisions. On the other hand, a provider of certain pooled investment products
(such as an insurance company providing variable separate accounts) could never serve as the investment fiduciary under a PEP because of the inherent nature of the separate accounts
within an insurance contract under which varying compensation will likely be generated to the insurer regardless of separate account investments being chosen.

There also may be a number of securities laws complications related to the design and offering of investments under a PEP which may impact how investments are provided under
the PEP.

As in any such matter, the specific facts of the investments, the manager and the nature of the
investment vehicle will be determinative of whether there will be prohibited transactions.

C. Employers in the PEP

A PEP's dealing with potential prohibited transaction issues should be addressed in a manner

info@tagresources.com • tagresources.com

6501 Deane Hill Drive
Knoxville, TN 37919
865.670.1844

similar to those are investing in any other pooled investment arrangements, such as collective investment trusts. The P3, and its investment manager, will have the authority to limit the investments of the trusts in order to avoid these issues, and can be further dealt with directly in the arrangements between the P3 and the PEs.

Similarly, the same notion applies with regard to potential prohibited transaction issues related to the spin-off of non-compliant PE. Either the plan document or the arrangement between the P3 and the PE can be designed in a manner under which the PE authorizes the actions of the P3 during a spin-off in such a manner to avoid PTs.

Sincerely,

J. Britt McAfee
Chief Corporate Compliance Officer
TAG Resources, LLC