TRANSAMERICA®

Kent Callahan
Chief Executive Officer
Workplace Solutions
One Glenlake Parkway, Suite 1050
Atlanta, GA 30328
B: 770-510-5424
kent.callahan@transamerica.com

July 20, 2020

Submitted Electronically to: www.regulations.gov

U.S. Department of Labor
Employee Benefits Security Administration
Office of Exemption Determinations
200 Constitution Avenue N.W.
Suite 400
Washington, DC 20210

RE: Z-RIN 1210–ZA28: Prohibited Transactions involving Pooled Employer Plans under the SECURE Act and Other Multiple Employer Plans

Dear Sir or Madam:

The Transamerica companies ("Transamerica")[1] are pleased to provide comments in response to the Request for Information ("RFI") issued by the Department of Labor (the "Department") regarding prohibited transactions involving (1) the newly created pooled employer plans ("PEPs") under the Setting Every Community Up for Retirement Act ("SECURE Act") and (2) other multiple employer plans ("MEPs"). As under the RFI, we use the term "MEP" in this letter to refer to multiple employer plans that are not PEPs.

The RFI was published in the Federal Register on June 18, 2020 and is referenced above. Transamerica supported the enactment of PEPs, which are single defined contribution retirement plans that cover employees of completely unrelated employers, and we commend the Department's efforts to explore what guidance will be necessary in order for providers to make PEPs available to employers and self-employed individuals at the outset of 2021 when the statutory changes take effect.

Transamerica is focused on helping customers achieve a lifetime of financial security. Transamerica products and services help people protect against financial risk, build financial security, and create successful retirements. Transamerica designs customized retirement plan

[1] Transamerica markets life insurance, annuities, retirement plans, and supplemental health insurance, as well as mutual funds and related investment products. Transamerica products and services are designed to help Americans protect against financial risk, build financial security and create meaningful retirements. Currently, Transamerica is among the ten largest distributors in the U.S. of variable annuities. Transamerica provides services and products through life insurance agents, broker-dealers, banks, wholesalers, and direct marketing channels as well as through the workplace. Transamerica has over [256,000] licensed producers in the United States. In [2016], Transamerica paid $[6.9] billion in benefits to its policyholders.

solutions for both for-profit and non-profit businesses nationwide. Transamerica provides services for over 29,000 plans that collectively include over 8 million participants and represent over $200 billion in plan assets as of December 31, 2018. MEPs comprise 277 of these plans for approximately 13,000 employers, with a combined total of 1,253,526 participants and represent a total of $34.5 billion in plan assets.

The Department requested information on "the possible parties, business models, and conflicts of interest that respondents anticipate will be involved in the formation and ongoing operation of PEPs." As noted in the RFI, PEPs are required to designate a pooled plan provider ("PPP") who is a named fiduciary of the plan. PPPs are subject to the prohibited transaction provisions under the Employee Retirement Income Security Act of 1974 ("ERISA") and the Internal Revenue Code, which restrict plan fiduciaries from engaging in conflict of interest transactions. The Department has indicated that it is considering whether to propose a class exemption to cover prohibited transactions involving PEPs, as well as MEPs sponsored by employer groups or associations or professional employer organizations.

Transamerica offers the following comments related to the topics raised by the Department:

I. Transamerica has a long history of serving and promoting the use of MEPs, which are a critical tool in expanding retirement plan coverage.

Transamerica has a long history of leadership in promoting MEPs as an efficient and cost-effective solution for many employers and their employees. Studies have repeatedly shown that employer-sponsored defined contribution plans play a critical role in facilitating employee savings. According to research from nonprofit Transamerica Center for Retirement Studies® (TCRS), 88 percent of workers who are offered a 401(k) or similar plan are saving for retirement, either through the plan and/or outside of work, compared to just 52 percent of workers who are not offered such a plan.[2] However, as it is well known, not every employer is able to or chooses to offer a retirement savings plan to its employees. The TCRS 19th Annual Retirement Survey of employers found that 88 percent of large companies with 500 or more employees and 85 percent of medium-sized companies with 100 to 499 employees offer a 401(k) or similar employee-funded retirement plan, but only 60 percent of small companies with five to 99 employees do so.

Despite such statistics for small employers, TCRS found that one encouraging indicator in determining ways to overcome the reasons many employers give for not offering a plan[3] is that

[2] TCRS is a division of Transamerica Institute® ("The Institute") a nonprofit, private foundation. The Institute is funded by contributions from Transamerica Life Insurance Company and its affiliates and may receive funds from unaffiliated third parties. For employers, especially small businesses, for which a stand-alone defined contribution plan is not feasible, the MEP offers an attractive solution by addressing the primary reasons that employers do not establish workplace retirement savings plans for their workers: cost, administrative burden and fiduciary liability concerns.

[3] The TCRS 19th Annual Retirement Survey of employers found that, among companies that do not offer a 401(k) or similar plan, only 31 percent say that they are likely to begin sponsoring a plan in the next two years. The most frequently cited reasons among companies not planning to do so include: company is not big enough (54 percent), concerns about cost (42 percent), and employees are not interested (18 percent).

23 percent of those not likely to offer a plan say that they would consider joining a MEP offered by a vendor who handles many of the fiduciary and administrative duties at a reasonable cost.[4] In this regard, the cost advantage of a MEP is realized by achieving economies of scale, both in terms of the number of plan participants and assets. Additional savings are achieved by spreading the cost among all the participating employers in the MEP. Although the actual cost savings will depend on the number of participants, total assets, demographics of underlying adopting employers in a MEP and other variables, the savings in the MEP would be expected to grow as it achieves economies of scale that would not be attainable to the same degree for a small single employer plan. Further, the reduction of the potential liability and of the administrative burdens of an employer are generally achieved by delegating to a professional named fiduciary and plan administrator, respectively, the responsibility for operating the MEP. By delegating the responsibilities to professionals with the expertise and systems to operate and comply with the legal requirements of operating a MEP, the quality of the MEP market is enhanced.

Transamerica's long-standing belief that MEPs can play a meaningful role in narrowing the coverage gap is the reason we supported the SECURE Act's provision for PEPs, and why we have for years supported and served as a leader in the MEP area.

II. Transamerica has traditionally served as a a recordkeeping service provider to MEPs supervised by an independent fiduciary.

Throughout its long history with MEPs, Transamerica has traditionally served as a recordkeeping service provider to MEPs supervised by a third-party fiduciary. As we believe this model has best served our customers, we are supportive of a conflict free framework for MEPs and PEPs. For example, the business model in which a MEP sponsor has fiduciary responsibility for selecting and monitoring a recordkeeper and its services based on the MEP sponsor's independence from the recordkeeper should be available as a conflict-free option in the PEP context.

III. Transamerica encourages the Department to consider a path forward for businesses exploring how they can serve PEPs and MEPs in more than one capacity and in a conflict-free manner.

Transamerica understands that some of our business partners who perform other plan-related functions are exploring how they can best serve the PEP and MEP markets. Those discussions include possible scenarios where Transamerica's business partners would serve multiple roles with respect to a PEP, for example, as both a fiduciary and service provider. We encourage the Department to explore conflict-free mechanisms to permit such businesses to effectively perform multiple roles.

[4] Nonprofit Transamerica Center for Retirement Studies® ("TCRS"), *Employers: The Retirement Security Challenge*, 19th Annual Transamerica Retirement Survey, 2019, p. 47: https://transamericacenter.org/docs/default-source/retirement-survey-of-employers/tcrs2019_sr_employer_survey_retirement_security_challenge.pdf.

IV. To avoid significant and unnecessary costs, Transamerica asks the Department to clarify that the trustee of a PEP may transfer its responsibility for collecting contributions to the PEP.

The SECURE Act requires the trustee of a PEP "to be responsible for collecting contributions" to the PEP. In Transamerica's experience, MEPs typically use a directed trustee, which would not have any fiduciary expertise or any administrative system that could be used to enforce or oversee the collection of contributions. If such a trustee were forced to take on this responsibility with respect to a PEP, it would have to establish new systems to perform a new function,which would trigger unnecessary costs. We believe that it is important to avoid these significant unnecessary costs, so that coverage can be expanded to workers to the greatest extent.

Accordingly, we ask the Department to issue guidance clarifying that trustees are permitted to "transfer" this responsibility to another entity. The trustee's ability to transfer this responsibility, as opposed to merely delegate it, is important because, under a delegation, the trustee would retain oversight responsibility. Issuing such guidance would be consistent with section 403(a)(1) and (2) of ERISA, which provide exceptions to the rule that plan trustees must have exclusive authority and discretion to manage and control plan assets, and Congress has provided no indication that it did not intend for these statutory exceptions to apply with respect to PEPs.

* * * * *

Transamerica appreciates the Department's consideration of these comments. Expanding retirement plan coverage among small businesses and working owners is critical to enhancing the retirement security of individuals and the well-being of their immediate families. MEPs, and PEPs are a significant tool in helping more businesses provide retirement plans for their employees.

Sincerely,

Kent C. Callahan