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Submitted Electronically to: www.regulations.gov

U.S. Department of Labor
Employee Benefits Security Administration
Office of Regulations and Interpretations
200 Constitution Avenue N.W.
Room N-5655
Washington, DC 20210

RE: RIN 1210–AB94: Proposed Registration Requirements for Pooled Plan Providers

Dear Sir or Madam:

The Transamerica companies (“Transamerica”)¹ are pleased to provide comments in response to the request for comments issued by the Department of Labor (the “Department”) regarding its proposed regulation entitled “Registration Requirements for Pooled Plan Providers.” This proposed regulation (the “Proposed Rule”) would establish the requirements for registering with the Department and the Department of Treasury as a “pooled plan provider” for “pooled employer plans” under sections 3(43) and 3(44) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). A final rule is required by The Setting Every Community Up for Retirement Enhancement Act of 2019 (the “SECURE Act”), which provides that newly permitted pooled plan providers (“PPPs”) can begin offering pooled employer plans (“PEPs”) on January 1, 2021.

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.

September 30, 2020

Transamerica

Page 2

Transamerica commends the Department for issuing this Proposed Rule. The PPP registration requirement is a critical provision of the SECURE Act, and the registration process must be in place by January 1, 2021 to allow PEPs to commence operations. 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 solutions for both for-profit and non-profit businesses nationwide. Transamerica provides services for over 28,000 plans that collectively include over 4.5 million participants and represent over \$230 billion in plan assets as of December 31, 2019. Multiple employer plans (“MEPs”) comprise 289 of these plans for approximately 15,000 employers, with a combined total of 427,105 participants and represent a total of \$18.4 billion in plan assets.

Under the SECURE Act, a PPP cannot begin PEP operations unless the PPP is registered with the Department prior to commencing operations. Under the Proposed Rule, the Department would establish a new form – EBSA Form PR (Pooled Plan Provider Registration) – as the required filing format for PPP registration (“Form PR”). The filing of the Form PR also constitutes filing with the Department of the Treasury.

Transamerica offers the following comments related to the Proposed Rule and the Form PR.

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.

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.

September 30, 2020

Transamerica

Page 3

Despite these disappointing statistics for small employers, TCRS found an encouraging indicator.³ Namely, *twenty three 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 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. Actual cost savings will depend on the number of participants, total assets, demographics of underlying adopting employers in a MEP and other variables, however the cost 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. Since the “beginning of operations” would establish the deadline for registering as a PPP, the Department should provide a clear definition that relates to the date on which a PPP begins operating a plan as a PEP.

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 PEPs offer a similar framework with the PPP as the third-party fiduciary responsible for the operation of the PEP, Transamerica intends to offer its services to PEPs by working closely with their respective PPPs. As the PEP's named fiduciary and ERISA Section 3(16) plan administrator, the PPP will have the authority to select and retain recordkeeping service providers, such as Transamerica, on behalf of the PEP. Transamerica is aware that certain service providers are already making preparation to become a PPP, including satisfying the Department's registration requirement as finalized. In this respect, Transamerica intends to commence marketing its services to such prospective PPPs and their affiliates before January 1, 2021. Under the Proposed Rule, a PPP

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).

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.

September 30, 2020

Transamerica

Page 4

would be required to file an initial registration “no earlier than 90 days and no later than 30 days before beginning operations as a pooled plan provider.” For this purpose, the Department would define “beginning operations as a pooled plan provider” to mean “publicly marketing services as a pooled plan provider or publicly offering a pooled employer plan.” We do not believe this definition would implicate a service provider seeking to market its services to a prospective PPP itself, nevertheless, we would urge the Department to adopt an approach defining the beginning operations as the date on which the PPP begins “initiation of operations of a plan as a pooled employer plan.” This is a phrase already used in the Proposed Rule and would, therefore, constitute the triggering event for both the PPP registration deadline and the PEP supplemental filing deadline. Under this suggested approach, accepting applications of individual employers to participate in the PEP, enrolling their respective employees in the PEP or accepting contributions or assets into the PEP’s trust would clearly show the initiation of operations of a plan as a PEP and also the beginning of operations as a PPP. Such an approach would not preclude a prospective PPP from issuing RFPs or RFIs to prospective PEP service providers and reviewing their services and fees before January 1, 2021.

III. Transamerica encourages the Department to clarify which affiliates of the PPP are required to be listed on the Form PR.

In addition to a requirement to describe the administrative, investment, and fiduciary services that will be offered or provided in connection with the PEP, the Proposed Rule would require a prospective PPP to include on the Form PR “a description of the role of any affiliates in such services.” Line 3 of Form PR instructs, however, that the PPP list an affiliate only if the affiliate “provides such service or product.” The former category is unjustifiably broader and less objective. To avoid confusion and uncertainty as to which affiliates a PPP is required to list on the Form PR, we urge the Department to instead use the more precise language found on Line 3 of the proposed Form PR itself. Accordingly, the Proposed Rule would specify that only affiliates who are service or product providers to the PEP would be listed on the Form PR.

IV. Given the short timeline between the Proposed Rule and the effective date of the SECURE Act, the Department should act as expeditiously as possible to issue the guidance required under the SECURE Act regarding PPPs and PEPs.

Guidance is pending from the Department on requirements for PPPs and PEPs to follow to comply under the SECURE Act. A brief listing of these requirements includes, without limitation, required plan provisions in a PEP plan document, obligations of the PEP’s trustee(s) with regard to the collection of plan contributions, and the extent to which fiduciary and other duties within a PEP may be delegated or assigned by the PPP and the trustee(s). The Proposed Rule itself is pressing guidance which must be finalized before the end of the 2020 calendar year. We ask that the Department work as expeditiously as possible to issue the needed guidance before January 1, 2021.

September 30, 2020
Transamerica
Page 5

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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,

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Kent C. Callahan